

App. No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CODY BALLINGER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE
PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Brett M. Kavanaugh, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

Petitioner, Cody Ballinger, by his counsel, respectfully requests pursuant to Supreme Court Rules 13.5 and 22 that the time for a petition for writ of certiorari in this matter be extended for 60 days to and including May 15, 2026. The United States Court of Appeals for the Sixth Circuit issued its judgment and published opinion affirming the judgment in this case on September 16, 2025, then denied a petition for rehearing en banc on December 16, 2026 (*see* Appendix). Mr. Ballinger's time to petition for writ of certiorari in this Court would therefore expire on March 16, 2026, absent an extension. Mr. Ballinger files this application at least ten days before that

date, and supports his request as follows:

1. Mr. Ballinger pleaded guilty to the simple offense of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). At the time of his offense, that crime carried a maximum penalty of 10 years' imprisonment. 18 U.S.C. § 924(a)(2) (2021). But the Armed Career Criminal Act, 18 U.S.C. § 924(e) ("ACCA"), establishes a 15-year mandatory minimum sentence for individuals with "three previous convictions" for "a violent felony or a serious drug offense," each committed "on occasions different from one another." 18 U.S.C. § 924(e)(1). In *Wooden v. United States*, 595 U.S. 360 (2022), this Court established a multi-factored, fact-laden test for determining whether prior offenses count as a single occasion or instead different ones.

2. At his sentencing hearing, held on June 14, 2023, Mr. Ballinger objected to the application of the ACCA's enhanced punishment, which was based on the district court's factfinding that he previously committed three ACCA predicate offenses on different occasions. He argued that under the combined reasoning of *Wooden* and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the occasions-different fact must be charged in the indictment and found by a jury beyond a reasonable doubt (or admitted by him as part of his guilty plea). Because none of that occurred in his case, the district court could not punish him for the greater ACCA offense, but only for the simple § 922(g) offense to which he pled guilty.

3. The district court disagreed, considering itself bound by precedent to decide the occasions-different fact for itself, by a preponderance of evidence.

Concluding that Mr. Ballinger committed his prior offenses on different occasions, the district court sentenced him to 180 months' imprisonment, the statutory mandatory minimum under the ACCA.

4. While Mr. Ballinger's case was on appeal, this Court decided *Erlinger v. United States*, 602 U.S. 821 (2024), in which it held that the ACCA's occasions-different fact must be charged in the indictment and proven to a jury beyond a reasonable doubt (or admitted by a defendant as part of his guilty plea). *Erlinger* thereby established that the district court erred in Mr. Ballinger's case.

5. In a published decision, the Sixth Circuit affirmed. It rejected Mr. Ballinger's argument that the *Erlinger* error was structural, relying on precedent holding that harmless-error review applies. (App. at 3a-5a.) See *United States v. Campbell*, 122 F.4th 624, 630-31 (6th Cir. 2024). Applying the standard the court has adopted for harmless-error review in *Erlinger* appeals involving guilty pleas, the court considered whether the government has shown "beyond a reasonable doubt that the jury would have found the defendant's offenses occurred on different occasions." *United States v. Durham*, 151 F.4th 821, 825 (6th Cir. 2025) (per curiam). The court also rejected, again relying on circuit precedent, Mr. Ballinger's argument that it could not rely on information in the presentence report to find the error harmless, but was instead limited to the record of the plea proceeding. (App. at 3a, 4a-5a.) The court instead focused on a hypothetical jury and information never presented to a jury to determine that the error was harmless.

6. Good cause supports granting an extension of time. In the time since

the lower court denied rehearing, undersigned counsel has been responsible for a large number of briefs and other filings. Despite due diligence on the part of counsel, the press of these and other responsibilities past and upcoming has left insufficient time in which to prepare the petition.

Mr. Ballinger therefore asks this Court to extend the time to file a petition for a writ of certiorari in this appeal by 60 days, up to and including May 15, 2026.

Respectfully submitted,

s/ Jennifer Niles Coffin

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