

No. _____

IN THE
Supreme Court of the United States

ANTHONY LEE DANIELS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

G. ALAN DUBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

JACLYN L. TARLTON
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jackie_tarlton@fd.org

Counsel for Petitioner

QUESTION PRESENTED

This case presents an important and recurring criminal-law question dating from *Washington v. Recuenco*, 548 U.S. 212 (2006). In *Recuenco*, the Court held that a “judicial factfinding” error under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), was not “structural,” meaning that it was subject to harmless-error review. *Id.* at 220 n.3; *see id.* at 218-222. This Court’s continued silence on the nature of that harmless-error review has led to an entrenched four-way circuit conflict on the nature of harmless-error review in this context. This case squarely presents this long-simmering issue.

The question presented is:

What showing must the Government make to carry its harmless-error burden on an acknowledged error under *Erlinger v. United States*, 602 U.S. 821 (2024)?

LIST OF ALL PARTIES TO THE PROCEEDING

Anthony Lee Daniels
United States of America

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

United States Court of Appeals for the Fourth Circuit, *United States v. Daniels*,
2026 WL 1134227 (4th Cir. 2026).

United States District Court for the Eastern District of North Carolina, *United States v. Daniels*, No. 5:23-CR-51-BO-RN-1 (judgment entered Jan. 30, 2024)

TABLE OF CONTENTS

QUESTION PRESENTED	i
LIST OF ALL PARTIES TO THE PROCEEDING	ii
LIST OF ALL DIRECTLY RELATED PROCEEDINGS	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
INTRODUCTION	2
STATEMENT.....	5
REASONS FOR GRANTING THE PETITION.....	12
This Court should grant review to determine the nature of the Government's harmless-error burden.....	12
A. The circuits are divided on the legal standard, as the Fourth Circuit has acknowledged.....	12
B. This case presents a clean vehicle for deciding the correct legal standard.....	17

C. This issue is recurring and important, and the decision below is an outlier that devalues the jury-trial right.....	18
CONCLUSION.....	20
APPENDIX A: Opinion of the U.S. Court of Appeals for the Fourth Circuit (April 27, 2026).....	1a
APPENDIX B: Sentencing Transcript of the U.S. District Court for the Eastern District of North Carolina (Jan. 24, 2024).....	5a
APPENDIX C: Motion Hearing Transcript of the U.S. District Court for the Eastern District of North Carolina (Nov. 30, 2023)	17a
APPENDIX D: Arraignment Hearing Transcript of the U.S. District Court for the Eastern District of North Carolina (Jul. 12, 2023)	26a

TABLE OF AUTHORITIES

CASES

<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	i, 5, 12, 14, 18
<i>Carella v. California</i> , 491 U.S. 263 (1989)	12
<i>Erlinger v. United States</i> , 602 U.S. 821 (2024)	<i>passim</i>
<i>Neder v. United States</i> , 527 U.S. 1 (1999)	3
<i>United States v. Brown</i> , 136 F.4th 87 (4th Cir. 2025)	<i>passim</i>
<i>United States v. Cogdill</i> , 130 F.4th 523 (6th Cir. 2025)	14, 15, 16, 17, 18, 19
<i>United States v. Durham</i> , 151 F.4th 821 (6th Cir. 2025)	16
<i>United States v. Guerrero-Jasso</i> , 752 F.3d 1186 (9th Cir. 2014)	19
<i>United States v. Haymond</i> , 588 U.S. 634 (2019)	5
<i>United States v. Johnson</i> , 114 F.4th 913 (7th Cir. 2024)	16
<i>United States v. Lara-Ruiz</i> , 721 F.3d 554 (8th Cir. 2013)	14, 15, 18, 19, 20
<i>United States v. Legins</i> , 34 F.4th 304 (4th Cir. 2022)	3, 19
<i>United States v. Lewis</i> , 802 F.3d 449 (3d Cir. 2015)	<i>passim</i>
<i>United States v. Olano</i> , 507 U.S. 725 (1993)	14

<i>United States v. Rivers</i> , 134 F.4th 1292 (11th Cir. 2025)	16
<i>United States v. Stowell</i> , 82 F.4th 607 (8th Cir. 2023) (en banc)	15
<i>United States v. Valencia</i> , 137 F.4th 331 (5th Cir. 2025)	16
<i>United States v. Whitfield</i> , 695 F.3d 288 (4th Cir. 2012)	14
<i>United States v. Xavier-Smith</i> , 136 F.4th 1136 (8th Cir. 2025)	15
<i>Washington v. Recuenco</i> , 548 U.S. 212 (2006)	i, 4, 19
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. V.....	2
U.S. Const. amend. VI	2
STATUTES	
18 U.S.C. § 924(e).....	2
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1291.....	1
RULE	
Federal Rule of Criminal Procedure 52(a)	2

IN THE
Supreme Court of the United States

ANTHONY LEE DANIELS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit**

PETITION FOR WRIT OF CERTIORARI

Petitioner Anthony Daniels respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion is unreported and available at 2026 WL 1134227 (4th Cir. 2026). Pet. App. 1a-4a. The District Court's sentencing order is unpublished and available at Pet. App. 5a-16a.

JURISDICTION

The District Court entered final judgment on January 30, 2024. The Fourth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and entered judgment on April 27, 2026. This Court entered an order on July 20, 2026, extending the deadline to file any petition for a writ of certiorari until September 24, 2026. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the U.S. Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), provides, in relevant part:

(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years

Rule 52(a) of the Federal Rules of Criminal Procedure provides:

Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

INTRODUCTION

This Court’s intervention is desperately needed to stop the gradual erosion of the Fifth and Sixth Amendment’s jury-trial right through the lower courts’

misapplication of harmless-error review. Justice Scalia long ago observed that an overly broad conception of harmless-error review could “put[] appellate courts in the business of reviewing the defendant’s *guilt*” in the first instance, without any jury verdict, based on judicial “speculation” about what a jury might do. *Neder v. United States*, 527 U.S. 1, 38-39 (1999) (Scalia, J., concurring in part and dissenting in part). Although such “intrusions on the jury right” may seem “convenient” or justifiable based on “expediency,” Justice Scalia warned that they should not be tolerated because “these inroads upon this sacred bulwark of the nation . . . though begun in trifles . . . may gradually increase and spread.” *Id.* at 39-40 (quoting 4 Blackstone, Commentaries *350).

This warning has proven prescient, as the lower courts now routinely use harmless-error review as a substitute for the jury-trial right. Judge Richardson echoed Justice Scalia’s concern about this state of affairs in a recent Fourth Circuit opinion. Despite feeling bound by precedent to disregard a jury-right violation under harmless-error review, he wrote on behalf of a unanimous three-judge panel “that there is something deeply unsatisfying about this result.” *United States v. Legins*, 34 F.4th 304, 323 (4th Cir. 2022). Citing Justice Scalia, Judge Richardson described it as “bizarre that a deprivation of the jury right, which reflects a distrust of judges to adjudicate criminal guilt, can be set aside as harmless when we judges find the result sufficiently clear.” *Id.* (citing *Neder*, 527 U.S. at 32 (Scalia, J., concurring in part and dissenting in part)). He then quoted Justice Ginsburg to describe the result as “particularly unsettling in this context, when the defendant,

‘charged with one crime . . . was convicted of another . . . *sans* charge, jury instruction, or jury verdict.’ ” *Id.* at 323-324 (quoting *Recuenco*, 548 U.S. at 229 (Ginsburg, J., dissenting)).

This case presents a stark example of how fundamental rights are being lost in the lower courts—and why this Court’s intervention is needed. After this Court granted certiorari in *Erlinger*, the District Court declined to continue sentencing to await this Court’s guidance. It plowed ahead, calling “the options . . . nonexistent.” The court applied the enhancement that increased Mr. Daniels’s guideline range from three to four years of imprisonment to a mandatory minimum of *fifteen* years, expressing its disbelief that convictions sentenced on the same day could support an ACCA enhancement and remarking that the enhanced sentence is “the end of his life.”

The Fourth Circuit then recognized the District Court’s error but refused to correct it, affirming under harmless-error review even though it is undisputed that (1) no one advised Mr. Daniels before his plea that he had a right to have a jury decide the ACCA’s different-occasions element beyond a reasonable doubt; (2) Mr. Daniels did not admit, and a jury neither considered nor found that Mr. Daniels’s predicates were committed on occasions different from one another; and (3) Mr. Daniels timely objected to these errors in the District Court and tried repeatedly to continue his sentencing to allow the District Court to have the benefit of this Court’s guidance in *Erlinger*.

Unfortunately, as Justice Scalia predicted and as Judge Richardson’s concerns indicate, this type of harmless-error outcome is not unique to Mr. Daniels’s case. Far from it. And to further complicate matters, there is an entrenched four-way circuit conflict on the nature of harmless-error review in this context, which means that the availability of relief for jury-right errors depends in significant part on geography.

This Court’s intervention is needed. Without it, our criminal justice system will continue to experience a “displacement of the jury’s traditional supervisory role, under cover of a welter of new labels,” a trend that validates the “Framers’ fears that the jury right could be lost not only by gross denial, but by erosion.” *United States v. Haymond*, 588 U.S. 634, 650 (2019) (second quote from *Apprendi*, 530 U.S. at 483). This Court should grant review and reverse the decision below.

STATEMENT

In February 2023, Mr. Daniels was charged in a single-count indictment with being a felon in possession of a firearm, in violation of 18 § 922(g)(1). JA009. His offense arose out of a Rocky Mount Police Department response to a “damage to property” call. JA017. Mr. Daniels’s ex-girlfriend reported she had seen him throw an object at the window of her child’s father’s car. JA017. She obtained a trespass warrant and told officers Mr. Daniels was parked at the end of the block. JA018. Officers found him intoxicated and asleep in his car, arrested him, and found a handgun in his jeans pocket incident to arrest. JA018. He pleaded guilty in July 2023, without a written plea agreement, to the indictment. Pet. App. 26a-33a.

At his guilty-plea hearing, the District Court explained that:

Punishment for that is zero to 10 years, a fine of up to \$250,000, 3 years of supervised release. If your criminal history is extensive, you may be classified as an armed career criminal, in which case the punishment is 15 years to life, a fine, and supervised release.

Pet. App. 29a. The District Court never explained what would qualify Mr. Daniels as an armed career criminal and never mentioned the different-occasions element of the ACCA. It found that the plea was “voluntarily made” and “a factual basis exists.” Pet. App. 31a. The Assistant United States Attorney explained his “belief” that “Mr. Daniels is going to qualify as an armed career criminal and will be facing a minimum sentence of 15 years,” seeking his detention, which the court denied.

Pet. App. 32a. Noone ever advised Mr. Daniels that, before the 15-year, mandatory-minimum sentence could be imposed, he had a right to demand that the Government prove to a unanimous jury, beyond a reasonable doubt, that he had “three previous convictions. . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another.” 18 U.S.C. § 924(e)(1).

Following Mr. Daniels’s guilty plea, the Probation Office prepared a presentence report, applying the 2021 Guideline Manual. JA106. Under U.S.S.G. § 2K2.1, the Office calculated a base offense level of 20 because it determined that Mr. Daniels had a prior conviction for a crime of violence. JA106. The Office also determined that Mr. Daniels qualified as an armed career criminal, recommending that he be sentenced under the ACCA and under U.S.S.G. § 4B1.4(a). The presentence report relied on the following robbery and attempted robbery with a dangerous weapon convictions as ACCA predicates:

Case number	Offense Date	County	Location	Items
07CRS54870	4/18/2007	Nash	Movie Gallery, Rocky Mount, NC	\$400
07CRS54866	5/12/2007	Nash	Fuel Doc Gas Station, Rocky Mount, NC	\$450
07CRS54863	6/5/2007	Nash	Game Stop, Rocky Mount, NC	\$850 and 3 Play Station Video Systems
07CRS54857	6/28/2007	Nash	Kangaroo Mart Gas Station	\$210
07CRS54466	7/2/2007	Nash	Shoe Show	U.S. currency

JA047; JA054-JA055; JA056-JA057; JA060-JA061; JA062-JA063; JA099. Mr. Daniels was arrested for one of these offenses on July 2, 2007; he was arrested for the remaining four on July 20, 2007. JA099. So Mr. Daniels committed these robbery and attempted robbery offenses in a spree, without any intervening arrest, during a two-and-a-half month period between April 18, 2007, and July 2, 2007, when he was twenty years old.

Based on the ACCA enhancement, the presentence report recommended a total offense level of 30, a criminal history category IV, and a guideline sentencing range of 180 months, the statutory mandatory minimum for an armed career criminal. JA107. Before applying the ACCA enhancement, the presentence report had calculated Mr. Daniels's total offense level at 20, less three levels for acceptance, which would have produced a guideline range of 37 to 46 months. JA106-JA107; U.S.S.G. Ch. 5 Pt. A (2021) (sentencing table for offense level 17 and criminal history category IV).

In November 2023, after the presentence report was prepared but before sentencing in Mr. Daniels’s case, this Court granted certiorari in *Erlinger v. United States*, 602 U.S. 821 (2024). That case was poised to decide “[w]hether the Constitution requires a jury trial and proof beyond a reasonable doubt to find that a defendant’s prior convictions were ‘committed on occasions different from one another,’ as is necessary to impose an enhanced sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1).” Petition for Certiorari, *Erlinger*, 2023 WL 6623133 at *I (Oct. 4, 2023).

In response, Mr. Daniels moved to continue sentencing and asked to brief the *Erlinger* issue, explaining his objection to his armed career criminal designation because it hadn’t been admitted at the guilty-plea hearing nor “submitted to a jury and proven.” Pet. App. 21a-22a. Mr. Daniels himself expressed his view that he “shouldn’t be tried as an armed career criminal” because:

When I took—like, when the charges happened, it wasn’t like I got found convicted of one armed robbery and I got out and went back and committed numerous armed robberies. Like, when I got caught, like, it was all at one time. So, like, when I took my plea, it was all for one judgment. Like—so it ain’t, like, like I got out and I went back and committed another armed robbery or nothing like that. Like, all my—all my convictions was at one—at one time.

Pet. App. 22a-23a. The parties briefed the *Erlinger* issue, with Mr. Daniels objecting to the ACCA designation in the presentence report and asking the court to hold his case in abeyance until this Court issued its decision in *Erlinger*. JA036-JA072.

Without explanation, the District Court declined to hold Mr. Daniels's case in abeyance for *Erlinger*. It did so despite defense counsel explaining that a decision should be forthcoming in that case within five months. Pet. App. 6a. In response, the court stated only: "Yeah. I'll deny your request for a continuance." Pet. App. 6a.

So sentencing went forward on January 24, 2024. Pet. App. 5a-16a. As at the guilty-plea hearing, the District Court did not inform Mr. Daniels that he had Fifth and Sixth Amendment rights to demand that the Government prove the different-occasions element to a jury beyond a reasonable doubt.

Mr. Daniels began by apologizing for carrying a concealed weapon and expressing his desire to "move on from the situation." Pet. App. 7a. He explained that he isn't an "armed career criminal," that he doesn't "sit here and get in constant trouble or nothing like that." Pet. App. 7a. He acknowledged his bad decision to possess a firearm as a felon, but explained he always "work[ed], always provided for my family." Pet. App. 7a.

The District Court noted that Mr. Daniels was only deemed an armed career criminal by the Probation Office based on a robbery spree when he was twenty that was resolved in one day in January 2009, in Nash County, North Carolina. Pet. App. 8a-9a; *see* JA099-JA100. The court expressed surprise that even convictions sentenced on the same day could be separated out for ACCA purposes. Pet. App. 9a ("So you can stack them with one conviction?"; "So you're telling me that after his conviction and sentence in paragraph 22, if he ever had a gun again and was charged under 922, he would automatically be an ACCA?").

In response to the District Court's questions about ACCA, the probation officer responded that, if Mr. Daniels were not deemed an armed career criminal, his guideline range would be 37 to 46 months' imprisonment. Pet. App. 11a.

Mr. Daniels's counsel explained that he had been on supervised probation from the state court system based on the same firearm from this case since September of 2022 and had done well, participating in Alcoholics Anonymous meetings, and working seasonally with an event retail company, a tobacco company, and at Hardee's. Pet. App. 12a. He was staying out of trouble and taking care of his family, including his wife and her six children. Pet. App. 12a. Mr. Daniels's wife was in court to support him. Pet. App. 12a.

In response to the court's questions, Mr. Daniels and his counsel explained that the incident in this case arose when police responded to a "damage to property" call by his ex-girlfriend. Pet. App. 13a; JA017. When officers arrived, Mr. Daniels was found nearby, asleep in his car after drinking. The firearm was discovered in his pocket. Pet. App. 13a-14a.

In response to all of Mr. Daniels's arguments in mitigation, the court expressed its perceived impotence in the face of then-binding caselaw:

THE COURT: Well, he's painted himself into a corner, though. You know...

* * *

THE COURT: It's the end of his life.

* * *

THE COURT: What can I do?

* * *

THE COURT: I mean, the options are nonexistent. There's no way around the ACCA, is there?

JA082.

Without further explanation, the court imposed a sentence of 180 months, to be followed by two years of supervised release, under the “standard conditions of supervision in this district.” Pet. App. 15a. It imposed a \$100 special assessment. The court allowed Mr. Daniels to self-report and recommended him to FCI Butner. Pet. App. 15a.

Mr. Daniels appealed, explaining that, after *Erlinger*, it was error for the District Court to apply the armed career criminal designation where the separate-occasions issue was neither admitted nor proven to a jury beyond a reasonable doubt.

Although the Fourth Circuit panel agreed that the District Court erred, it found the error harmless and affirmed Mr. Daniels's conviction and sentence. It relied on its decision in *United States v. Brown*, 136 F.4th 87 (4th Cir. 2025), explaining that Mr. Daniels was “informed of the possible ACCA enhancement,” he “did not seek to withdraw his plea,” and “did not dispute the accuracy of any of the information in his presentence report.” Pet. App. 3a. The court also found that, because Mr. Daniels's predicate offenses spanned from April to July of 2007, there was “no doubt that [Daniels] would have pleaded guilty” if he'd been advised of his right to a jury trial on the different-occasions issue. Pet. App. 4a.

This timely petition followed.

REASONS FOR GRANTING THE PETITION

This Court should grant review to determine the nature of the Government’s harmless-error burden.

This Court should resolve an entrenched four-way circuit split as to the nature of harmless-error review for this type of error. As Justice Scalia recognized long ago, the precise “mode of analysis” for a harmless-error review will differ depending on the nature of the error. *Carella v. California*, 491 U.S. 263, 267 (1989) (Scalia, J., concurring in the judgment). This Court has never opined on the proper “mode of analysis” for an *Apprendi*-like error, and that silence has led to a widespread divide of authority that warrants this Court’s attention.

A. The circuits are divided on the legal standard, as the Fourth Circuit has acknowledged.

In *Brown*, the Fourth Circuit acknowledged that the circuits are divided on the nature of the harmless-error showing required of the Government in this context. But while the decision cited a two-way split, the circuits have in fact divided into at least four distinct camps.

Approach #1. Under the Third Circuit’s en banc *Lewis* decision, the harmless-error analysis in the failure-to-charge context focuses on “whether the error would have made no difference to the sentence.” *United States v. Lewis*, 802 F.3d 449, 456 (3d Cir. 2014) (cleaned up). In other words, the Government carries the “heavy burden to show that the error would have made no difference to the sentence—*i.e.*, had the defendant been sentenced for the crime for which he was convicted, his sentence would have been the same.” *Id.* at 458 n.11. In *Lewis* itself, the

Government could not meet its burden because the defendant received a seven-year mandatory minimum sentence based on a brandishing offense that was not charged in the indictment, and he would have faced only a five-year minimum based on the lesser offense actually charged. *Id.* at 458.

The Third Circuit explained that this type of sentencing-focused review was appropriate based on the nature of the error. As the court explained, “nothing was wrong with Lewis’s indictment or trial.” *Id.* at 455. To the contrary, “[t]he indictment charged Lewis with an offense—using or carrying—and did not omit any elements of that charge.” *Id.* Likewise, the jury at Lewis’s trial “received the proper instructions for the using or carrying offense” and “properly entered a verdict finding Lewis guilty of that offense.” *Id.* The error occurred when the district court, despite the indictment’s failure to charge brandishing and the jury verdict’s failure to find it, nonetheless “sentenced Lewis for the offense of brandishing.” *Id.*

The same is true here. Mr. Daniels’s indictment properly charged him with a felon-in-possession offense under 18 U.S.C. § 922(g)(1), and he pleaded guilty, admitting the elements of that offense. The error occurred at sentencing when the District Court imposed an ACCA sentence even though Mr. Daniels had not admitted the additional elements required for the ACCA offense as part of his guilty plea. Accordingly, under Third Circuit precedent, the harmless-error inquiry in Mr. Daniels’s case would have focused on whether the error contributed to his sentence.

In addition to the *Lewis* en banc decision, several judges from other circuits have endorsed a similar approach to harmless-error review in this context. For example,

as an alternative to a structural-error holding, Judge Clay advocated for this same standard in his *Cogdill* dissent. *United States v. Cogdill*, 130 F.4th 523, 541 (6th Cir. 2025) (“even if a harmless error analysis applied to this case, the question we should ask is whether the sentence would remain the same without the error”). A Fourth Circuit panel likewise articulated this same standard in an alternative holding in a 2012 opinion, but the panel below declined to follow that standard in Mr. Daniels’s case. *See United States v. Whitfield*, 695 F.3d 288, 307 (4th Cir. 2012) (“to demonstrate harmlessness in the sentencing context, [the Government] must prove beyond a reasonable doubt that the court would have imposed the same sentence in the absence of the constitutional error”).

Approach #2. The Eighth Circuit takes a hybrid approach that adjusts the “mode of analysis” depending upon the specific type of *Apprendi* error. For cases that involve a failure-to-charge error, the court will find that the error is not harmless if the statutory sentencing range applied at sentencing was harsher than the sentencing range for the crime charged in the indictment. *United States v. Lara-Ruiz*, 721 F.3d 554, 558 (8th Cir. 2013) (“Lara-Ruiz’s rights were substantially affected because he was sentenced for a statutory crime different from that which the jury found him guilty.”).¹ This approach is similar to the Third Circuit’s approach in *Lewis*, except that it is focused on the statutory range rather than the

¹ This discussion in *Lara-Ruiz* arose under the third prong of plain-error review, which is equivalent to the harmless-error analysis except that the defendant, rather than the government, bears “the burden of persuasion” on plain-error review. *See United States v. Olano*, 507 U.S. 725, 734 (1993).

actual sentence imposed. *Id.* (explaining that “elevating the low-end of the sentencing range” caused the defendant’s “expected punishment” to increase, thus affecting his substantial rights). As a result, the standard is somewhat easier for a defendant to satisfy than the Third Circuit’s *Lewis* standard.²

The Eighth Circuit applies a different standard if the error in question is not a “failure to charge” but instead merely a failure to submit a particular issue to the jury. In *United States v. Stowell*, for example, the defendant did not assert a “failure to charge” error, instead challenging only the district court’s fact-finding on the ACCA’s different-occasions element. 82 F.4th 607, 610 (8th Cir. 2023) (en banc) (“Stowell argues that the Sixth Amendment required a jury to decide whether the offenses were committed on different occasions.”). The court held that any error was harmless because the jury would have made the same finding. *Id.* at 610-611; see also *United States v. Xavior-Smith*, 136 F.4th 1136, 1137 (8th Cir. 2025) (holding that the *Stowell* precedent “survives *Erlinger*” and finding harmless error because “[n]o reasonable juror could find that [Smith] committed his offenses on the same occasion”).

Approach #3. Several other circuits apply a reasonable-jury standard without analyzing the specific type of error. In *Cogdill*, for example, the Sixth Circuit—over Judge Clay’s dissent—required the Government to “show, beyond a reasonable

² Judge Wollman filed a separate opinion in *Lara-Ruiz*, advocating for a harmless-error standard equivalent to *Lewis*. *Id.* at 560 (Wollman, J., concurring and dissenting) (arguing that the dispositive harmless-error question should be whether “the ultimate sentence would be the same” even if the district court had applied the correct statutory range for the charged offense).

doubt, that any rational jury would have found that all three of Cogdill’s predicate offenses were ‘committed on occasions different from one another.’ 130 F.4th at 529. The court has applied that standard in several post-*Erlinger* cases. *See, e.g., United States v. Durham*, 151 F.4th 821, 830 (6th Cir. 2025) (finding error was harmless under this standard as to one codefendant but not harmless as to the other codefendant). The Fifth, Seventh, and Eleventh Circuits have also applied the same standard to *Erlinger* claims. *See, e.g., United States v. Valencia*, 137 F.4th 331 (5th Cir. 2025) (“any rational juror would have found beyond a reasonable doubt that Valencia’s violent felonies occurred on different occasions”); *United States v. Rivers*, 134 F.4th 1292, 1306 (11th Cir. 2025) (“the government bears the burden of showing beyond a reasonable doubt that a rational jury would have found that the defendant’s prior drug offenses all were “committed on occasions different from one another”); *United States v. Johnson*, 114 F.4th 913, 917 (7th Cir. 2024) (finding error was not harmless because “it is not clear beyond a reasonable doubt that a properly instructed jury would have found that Mr. Johnson’s January 22, 2009 robberies were committed on different occasions”).

Approach #4. The Fourth Circuit in *Brown* carved out a new, fourth approach to harmless-error review in this context. The court disagreed with both parties about the legal standard. It held that, because Mr. Brown pleaded guilty, “the Government’s harmless-error burden is to show beyond a reasonable doubt that if Brown’s indictment had” properly charged him with an ACCA offense, he “would have nonetheless waived [his jury-trial] right and admitted as part of his guilty plea

that his prior offenses were committed on different occasions.” *Brown*, 136 F.4th at 97. To apply this standard, the court relied on an evaluation of how it believed that Brown—if charged in the indictment with an ACCA offense—would have weighed the strategic risks and benefits of proceeding to a trial focused on the aggravated ACCA offense. *Id.* at 98-99.

B. This case provides a clean vehicle for deciding the correct legal standard.

This case presents a clean vehicle for this Court’s review of the legal standard. The choice of legal standard is dispositive in Mr. Daniels’s case. If the court below had applied a sentence-focused standard—like the Third Circuit’s in *Lewis* or the Eighth Circuit’s in *Lara-Ruiz*—there is no dispute that the Government could not have met its harmless-error burden where Mr. Daniels’s guideline range increased from three to four to *fifteen* years. Moreover, as the Sixth Circuit’s decision in *Cogdill* shows, the Government might not have met its burden even under a reasonable-jury standard. That’s because numerous juries, properly instructed on the *Wooden* factors, have acquitted defendants on enhanced ACCA offenses based on facts that are similar to those present in Mr. Daniels’s case. In *Cogdill*, for example, the Sixth Circuit discussed *United States v. Willis*, where a jury instructed on *Wooden*’s multi-factor test found a defendant not guilty of the ACCA enhancement in the face of undisputed evidence that three prior offenses “were committed at least two weeks apart from one another.” 130 F.4th at 530. This verdict, *Cogdill* explained, “illustrates more than a theoretical possibility of acquittal,” as it establishes “that a jury, properly instructed, may not necessarily

treat a long gap in time between offenses as conclusive.” *Id.* (cleaned up). Although *Cogdill* cited only *Willis*, that decision is far from an outlier. In fact, cases tried to verdict around the country since *Wooden* repeatedly show that juries do not consider time gaps as being anywhere close to dispositive under the multifactor test that *Wooden* mandates. See, e.g., Dkt. 173, Phase Two Verdict, *United States v. Pennington*, No. 1:19-CR-455 (N.D. Ga. Sept. 20, 2022) (acquittal on occasions where priors were separated by months); Dkt. 82, Special Finding on Count One, *United States v. Crews*, No. 8:24-CR-309 (M.D. Fla. May 21, 2025) (acquittal on occasions where three priors occurred over two-month period); Dkt. 134, Special Finding on Count One, *United States v. Bradshaw*, No. 8:23-CR-89 (Mar. 6, 2025) (acquittal on occasions where four priors occurred on March 4, 1997; November 14, 1997; August 9, 1999; and February 11, 2009). In short, the choice of legal standard for harmless-error review was critical given the facts of this case. Mr. Daniels would have certainly prevailed under either the standard from the Third Circuit’s *Lewis* decision or the Eighth Circuit’s *Lara-Ruiz* decision. And he may also have prevailed under the standard applied by the Sixth Circuit in *Cogdill*.

C. This issue is recurring and important, and the decision below is an outlier that devalues the jury-trial right.

The appropriate legal standard for evaluating harmless error in this context is an important and recurring question, one that has arisen frequently in the wake of cases like *Apprendi*, *Alleyne*, and *Erlinger*. The courts below have repeatedly highlighted that this Court’s precedents do not provide a governing standard, and the resulting circuit conflict shows that they need guidance. See *Cogdill*, 130 F.4th

at 540 (6th Cir. 2025) (“*Recuenco* never specified what that harmless error review entails. Thus, even if we were to believe that *Recuenco* controls the question before us, it provided no guidance, let alone binding guidance, as to how to apply the harmless error review it required.”) (Clay, J., dissenting) (citation omitted); *Legins*, 34 F.4th at 321 (“That top-line holding [of *Recuenco*] does not, of course, resolve how to perform the harmless-error analysis.”); *Lewis*, 802 F.3d at 457 (en banc) (“Importantly, at no point did the Supreme Court explain what harmless-error review should consist of.”); *United States v. Guerrero-Jasso*, 752 F.3d 1186, 1201 (9th Cir. 2014) (Berzon, J., concurring) (“[*Recuenco*] did not mandate any particular method for conducting that review.”). Choosing an appropriate standard is critical to safeguard the Constitution’s fundamental protections. Consider the following hypothetical, taken from the Third Circuit’s en banc decision in *Lewis*: Under the Government’s preferred standard, “if a defendant were charged and convicted of manslaughter, but the judge were to find evidence of premeditation to be overwhelming and uncontroverted, a sentence for the aggravated offense of murder would be permissible.” *Lewis*, 802 F.3d at 456 n.7. This hypothetical may seem extreme, but it flows inevitably from the Government’s preference for an evidence-focused harmless-error analysis even in cases of charging error. In fact, the Government itself “conceded” that “the logical outcome of [its] position” would yield this “Kafkaesque consequence.” *Id.*

The Fourth Circuit’s newly crafted standard poses an even greater threat. That standard depends not only on judicial speculation about a potential jury verdict for

an uncharged offense, but also on judicial speculation about how a criminal defendant would have weighed the pros and cons of trial for an offense that was not charged in the indictment to which he pleaded guilty.

This standard directly conflicts with the autonomy interests embedded within the Constitution’s jury-trial right for criminal defendants. As *Erlinger* recognized, the mere existence of strong evidence does not mean that “a judge rather than a jury should make the call” about whether a defendant pleads guilty. 602 U.S. at 842. Rather, “[i]n a free society respectful of the individual, a criminal defendant enjoys the right to hold the government to the burden of proving its case beyond a reasonable doubt to a unanimous jury of his peers ‘regardless of how overwhelmin[g]’ the evidence may seem to a judge.” *Id.* (quoting *Rose*, 478 U.S. at 578). Given the weight of these interests, if harmless-review is appropriate, it should be conducted under a sentence-focused standard like those adopted by the en banc Third Circuit in *Lewis* or the Eighth Circuit in *Lara-Ruiz*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

G. ALAN DuBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

JACLYN L. TARLTON
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.

Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jackie_tarlton@fd.org

SEPTEMBER 2026

Counsel for Petitioner