No. 24-

IN THE

Supreme Court of the United States

TROY L. FIELDS,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

On Petition for a Writ of Certiorari to the Colorado Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner was adjudicated a "habitual criminal" under state law, subjecting him to an increased maximum sentence, based on a finding by the trial judge—not the jury—that his prior convictions arose from separate and distinct criminal episodes. After the court below affirmed, this Court held that "the Fifth and Sixth Amendments require a unanimous jury" to determine beyond a reasonable doubt whether "a defendant's past offenses were committed on separate occasions" under the Armed Career Criminal Act. *Erlinger* v. *United States*, 144 S. Ct. 1840, 1846 (2024). The question presented is:

Whether Petitioner's Fifth and Sixth Amendment rights were violated when he was subjected to an increased maximum sentence based on the trial court's finding that his past offenses were committed on separate occasions.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner, the defendant below, is Troy L. Fields.

Respondent, the plaintiff below, is the People of the State of Colorado.

No corporate parties are involved in this case.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the County of Denver District Court, the Colorado Court of Appeals Division VII, and the Colorado Supreme Court: *People* v. *Fields*, Case No. 2017CR1872 (Colo. Cnty. Ct. Nov. 11, 2019); *People* v. *Fields*, Case No. 2020CA1708 (Colo. App. Aug. 3, 2023); and *Fields* v. *People*, Case No. 2023SC691 (Colo. May 6, 2024).

No other proceedings directly relate to this case.

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PETITION FOR A WRIT OF CERTIORARI

Troy L. Fields respectfully petitions for a writ of certiorari to review the judgment of the Colorado Court of Appeals in this case.

OPINIONS BELOW

The Colorado Court of Appeals' unpublished opinion is reproduced at Pet. App. 1a–16a. The Colorado Supreme Court's unreported order denying Mr. Field's petition for writ of certiorari is reproduced at Pet. App. 17a.

JURISDICTION

The Colorado Court of Appeals issued its judgment on August 3, 2023, and the Colorado Supreme Court denied Mr. Fields's timely petition for writ of certiorari on May 6, 2024. On July 29, 2024, Justice Gorsuch extended the time to file this petition through September 3, 2024. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment 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 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.

Colorado Revised Statutes § 16-13-101(2) (1994) provides as relevant:

> Every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall be adjudged an habitual criminal and shall be punished for the felony offense of which such person is convicted by imprisonment in a correctional facility for a term of four times the maximum of the presumptive range pursuant to section 18-1-105, C.R.S., for the class of felony of which such person is convicted. Such former conviction or convictions and judgment or judgments shall be set forth in apt words in the indictment or information. Nothing in this part 1 shall abrogate or affect the punishment by death in any and all

> crimes punishable by death on or after July 1, 1972.

Colorado Revised Statutes § 18-1.3-801(2)(a)(I)(A) (2017) provides as relevant:

> (2)(a)(I) Except as otherwise provided in paragraph (b) of this subsection (2) and in subsection (5) of this section, every person convicted in this state of any felony, who has been three times previously convicted, upon charges separately brought and tried, and arising out of separate and distinct criminal episodes, either in this state or elsewhere, of a felony or, under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States, of a crime which, if committed within this state, would be a felony, shall be adjudged an habitual criminal and shall be punished:
>
> (A) For the felony offense of which such person is convicted by imprisonment in the department of corrections for a term of four times the maximum of the presumptive range pursuant to section 18-1.3-401 for the class or level of felony of which such person is convicted.

INTRODUCTION

The Court should GVR this case because the decision below violates *Erlinger* v. *United States*, 144 S. Ct. 1840, 1846 (2024), decided after the lower court ruled.

Colorado's habitual-offender scheme applies to someone convicted of certain prior offenses "arising out of separate and distinct criminal episodes." Colo. Rev. Stat. § 18-1.3-801(2)(a)(I). Mr. Fields argued below that, under *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), the Constitution "required the jury to find that his prior convictions were separately brought and tried and arose out of separate and distinct criminal episodes." Pet. App. 12a. The Colorado Court of Appeals disagreed, reasoning that "*Apprendi*'s prior conviction exception … encompass[es] whether prior convictions were separately brought and tried and arose out of separate and distinct criminal episodes," making these questions "matters of law for the court." *Id.* at 14a. The court thus affirmed the trial court's decision finding Mr. Fields to be a habitual criminal. This ruling quadrupled his maximum presumptive sentence. The Colorado Supreme Court denied review.

Just weeks later, however, this Court definitively rejected the Colorado court's view. *Erlinger* held that "[t]he Fifth and Sixth Amendments require a unanimous jury" to determine beyond a reasonable doubt whether "a defendant's past offenses were committed on separate occasions" under the Armed Career Criminal Act (ACCA). 144 S. Ct. at 1843. In so holding, the Court reaffirmed that, under *Apprendi*'s prior-conviction exception, "a judge may 'do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant

was convicted of.'" *Id.* at 1854 (quoting *Mathis* v. *United States*, 579 U.S. 500, 511–12 (2016)). Thus, when a court finds that "offenses occurred on . . . separate occasions," triggering enhanced penalties, it does "more than [the Constitution] allows." *Id.* That is precisely what happened here.

The court below acted without the benefit of *Erlinger*. It is now clear that the Fifth and Sixth Amendments require that a unanimous jury—not a judge—determine whether Mr. Fields's prior offenses arose out of separate and distinct criminal episodes. The Court thus should vacate and remand this case in light of *Erlinger*. Alternatively, the Court should grant plenary review to consider how *Erlinger* applies to state-law schemes that track ACCA.

STATEMENT OF THE CASE

In 1994, a woman known as J.C. was kidnapped, sexually assaulted, and robbed in her home. In 2017, detectives investigating cold cases reprocessed DNA from J.C.'s case and identified a match with a DNA sample taken from Mr. Fields. As a result, Colorado charged Mr. Fields with sexual assault and kidnapping. Pet. App. 3a. The State also charged Mr. Fields with five habitual criminal counts. *Id.*

For each habitual criminal count, the State submitted jury instructions stating that Mr. Fields had previously been convicted and sentenced for the charged crimes. Pet. App. 130a. Mr. Fields objected, arguing that both the Constitution and state law required that the jury be instructed "that the offenses were separately charged and arose out of separate criminal episodes." *Id.* The trial court overruled these objections, holding that Mr. Fields had a limited right to a jury trial to determine identity; "all other questions relating to the habitual criminal statute were matters

of law for the court." *Id.* at 61a (cleaned up); *see id.* at 14a–15a.

The jury returned a guilty verdict on all the habitual criminal counts. Then the court—after itself determining that Mr. Fields's prior convictions were separately brought and tried and arose out of separate and distinct criminal episodes—sentenced Mr. Fields as a habitual offender. This quadrupled his maximum presumptive sentence on the kidnapping charge, as required by Colo. Rev. Stat. § 16-13-101(2) (1994).

On appeal, Mr. Fields argued that the trial court had violated his Sixth Amendment right to a jury trial because, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Pet. App. 62a (quoting *Apprendi*, 530 U.S. at 490).

Relying on Colorado precedent interpreting *Apprendi*, the Colorado Court of Appeals disagreed. It reasoned that "*Apprendi*'s prior conviction exception" to the Sixth Amendment's jury-finding requirement "encompass[es] whether prior convictions were separately brought and tried and arose out of separate and distinct criminal episodes." Pet. App. 13a–14a (citing *People* v. *Session*, 480 P.3d 747, 755 (Colo. App. 2020)). In turn, the court held that "[w]hether prior convictions are separately brought and tried, and whether they arose out of separate and distinct criminal episodes, 'can be definitively established based on the judicial records introduced at the habitual criminal trial.'" *Id.* at 14a (quoting *People* v. *Nunn*, 148 P.3d 222, 227 (Colo. App. 2006)). Accordingly, the court concluded, "[u]nlike the issue of identity, these issues are therefore 'matters of law for the court.'" *Id.* (quoting *People* v. *Jones*, 967 P.2d 166,

169 (Colo. App. 1997)). The Colorado Supreme Court denied review.

REASONS FOR GRANTING THE PETITION

I. The Court should grant, vacate, and remand in light of *Erlinger*.

A GVR is warranted because the decision below conflicts directly with this Court's subsequent ruling in *Erlinger*.

Colorado's habitual-criminal scheme applies to someone convicted of certain prior offenses "arising out of separate and distinct criminal episodes." Colo. Rev. Stat. § 18-1.3-801(2)(a)(I); *see* Colo Rev. Stat. § 16-13-101(2) (1994). The court below held that, under *Apprendi*, a judge, not a jury, can determine whether this requirement is met. But *Erlinger* made clear that the opposite is true.

1. *Erlinger* addressed ACCA, which imposes an enhanced sentence on defendants with "three prior convictions for 'violent felon[ies]' or 'serious drug offense[s]' that were 'committed on occasions different from one another.'" 144 S. Ct. at 1846 (citation omitted). There, the government sought an enhanced sentence under ACCA based on a set of prior burglary convictions. *Id.* at 1847. Erlinger responded that these burglaries "had not occurred on four separate occasions but during a single criminal episode," *id.*, and that resolving this issue required a jury to find the relevant facts.

This Court agreed, explaining that deciding whether "past offenses occurred on [separate] occasions" is a "fact-laden task": "Were the crimes committed close in time? How about the proximity of their locations? Were the offenses similar or intertwined in purpose and character?" *Id.* at 1851 (cleaned up). All these

questions, the Court recognized, "may be relevant" to the separate-occasion inquiry, and "all require facts to be found" before ACCA's sentence enhancement "may be lawfully deployed." *Id.* Given all this, the Court concluded, there is "no doubt what the Constitution requires": "Virtually 'any fact' that 'increase[s] the prescribed range of penalties to which a criminal defendant is exposed' must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted guilty plea)." *Id.* (quoting *Apprendi*, 530 U.S. at 490). Erlinger was therefore "entitled to have a jury" resolve the separate-occasions inquiry "unanimously and beyond a reasonable doubt." *Id.* at 1852.

2. The decision below plainly clashes with *Erlinger*. Just like ACCA, Colorado's habitual-offender law applies to someone "convicted" of certain prior offenses "arising out of separate and distinct criminal episodes." Colo. Rev. Stat. § 18-1.3-801(2)(a)(I); *cf.* 18 U.S.C. § 924(e)(1) (requiring three predicate convictions "committed on occasions different from one another"). As Mr. Fields argued below, this inquiry "will depend on several facts besides the convictions itself," including "when, where, and how the criminal episodes occurred," Pet. App. 13a, so the Constitution "required the jury to find that his prior convictions … arose out of separate and distinct criminal episodes," *id.* at 12a. Indeed, this inquiry mirrors the "fact-laden" inquiry required under ACCA, requiring determinations regarding whether the crimes were "committed close in time," the "[p]roximity" of their "location[s]," and whether the offenses were "similar or intertwined" in "purpose and character." *Erlinger*, 144 S. Ct. at 1851 (cleaned up).

Without the benefit of *Erlinger*, the lower court declined to "depart from" its earlier precedent.[1] It thus rejected Mr. Fields's argument, holding that whether prior offenses occurred on separate occasions is a "matter[] of law for the court" that can be "definitively established based on . . . judicial records." Pet. App. 14a. But as *Erlinger* now makes clear, the Constitution requires otherwise. "To determine whether Mr. [Fields's] prior convictions triggered [Colorado's] enhanced penalties [for habitual offenders]," the court "had to find that those offenses occurred on … separate occasions," which "require[s] facts to be found." *Erlinger*, 144 S. Ct. at 1851, 1854. Accordingly, in making this finding and adjudicating Mr. Fields a habitual criminal under Colorado law—which quadrupled his maximum presumptive sentence—"the court did more than [the Constitution] allows." *Id.* at 1854.

If "[p]resented with evidence about the times, locations, purpose, and character of [Mr. Fields's] crimes, a jury might have concluded that some or all occurred on different occasions. Or it might not have done so." *Id.* at 1852. Either way, all that can be said "for certain is that the sentencing court erred in taking that decision from a jury of Mr. [Fields's] peers." *Id.* This Court should vacate the lower court's decision and remand for further consideration in light of *Erlinger*,

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[1] The court below relied mainly on *People* v. *Session*, which held that "*Apprendi*'s prior conviction exception *extends to the additional statutory factual findings* for each prior conviction necessary to support a habitual criminal sentence, including: (1) that each prior conviction was separately brought and tried; (2) that they arose out of separate and distinct criminal episodes; and (3) that the accused was the person named in each prior conviction." 480 P.3d 747, 753 (Colo. App. 2020) (emphasis added) (citation omitted).

as it did in several federal criminal cases. *See, e.g.*, *McCall* v. *United States*, No. 22-7630; *Valencia* v. *United States*, No. 23-5606; *Thomas* v. *United States*, No. 23-5457; *Cogdill* v. *United States*, No. 23-6013; *Washington* v. *United States*, No. 23-6038.

II. Alternatively, the Court should grant plenary review to address *Erlinger*'s application to state-law recidivist schemes that mirror ACCA.

If the Court concludes that summary vacatur is not warranted, it should grant plenary review to consider *Erlinger*'s application to state-law recidivist schemes that, like Colorado's, mirror ACCA. As explained, Colorado's habitual-offender scheme, just like ACCA, applies where prior convictions occurred on "separate and distinct" occasions. *Compare* Colo. Rev. Stat. § 18-1.3-801(2)(a)(I) ("arising out of separate and distinct criminal episodes"), *with* 18 U.S.C. § 924(e)(1) (requiring three predicate convictions "committed on occasions different from one another").[2] Thus, just as "[c]onvictions arising from a single criminal episode . . . can count only once under ACCA," they can only count once under Colorado law. *Wooden* v. *United States*, 595 U.S. 360, 363 (2022).

Erlinger confirms that *Apprendi* means what it says: "Other than the fact of a prior conviction, *any fact* that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi*, 530 U.S. at 490 (emphasis added). It thus is "unconstitutional for a legislature to remove from the

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[2] It makes no difference that Colorado law uses the term "episodes" rather than "occasions." The "ordinary meaning of 'occasion'" "commonly refers to an event, occurrence, happening, or episode." *Wooden*, 595 U.S. at 367 (citations omitted).

jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed." *Id.* (quoting *Jones* v. *United States*, 526 U.S. 227 (1999) (Stevens, J., concurring)). *Erlinger* thus leaves no doubt that the lower court's reliance on its opinion in *Session*—which held that "*Apprendi*'s prior conviction exception *extends to the additional statutory factual findings* for each prior conviction necessary to support a habitual criminal sentence, including … that they arose out of separate and distinct criminal episodes," 480 P.3d at 753 (emphasis added) (citation omitted)—is fundamentally misguided.

Nor is there any basis for reading *Erlinger* as limited to federal cases. The prior-conviction-exception traced to *Apprendi* and analyzed in *Erlinger* originates from *Jones*: "[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." 526 U.S. at 243 n.6. *Apprendi* makes clear that this language from *Jones*, which interpreted a federal statute, applies with equal force to state laws through the Fourteenth Amendment: "The Fourteenth Amendment commands the same answer [as in *Jones*] in this case involving a state statute." *Apprendi*, 530 U.S. at 476. Indeed, as Justice Kavanaugh recognized in *Erlinger*, "'[u]nlike the Court's interpretation of ACCA in [other] cases," the "constitutional rule [announced in *Erlinger*] will apply not only to federal cases, but also to state cases," including to state laws with "recidivism enhancements that require judges to find whether the defendant commit-

ted prior crimes on different occasions." 144 S. Ct. at 1866 n.2 (Kavanaugh, J., dissenting).

Erlinger confirms that the Colorado Court of Appeals misapplied *Apprendi*. The court allowed only the issue of identity to go to the jury, keeping for itself the determination whether Mr. Fields's prior convictions arose out of separate and distinct criminal episodes. Under a straightforward application of *Erlinger*, this fact-laden inquiry necessarily requires facts to be found *beyond* the mere existence of a prior conviction, so the Fifth and Sixth Amendments "require a unanimous jury to make that determination beyond a reasonable doubt." *Id.*at 1846.

CONCLUSION

The Court should grant the petition, vacate the decision below, and remand for further review in light of *Erlinger*.

Alternatively, this Court should grant plenary review to consider *Erlinger*'s application to state-law recidivist schemes that mirror ACCA.

Respectfully submitted,

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