U.S. Department of Justice

Office of the Solicitor General

*The Solicitor General*

*Washington, D.C. 20530*

June 3, 2026

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: *United States* v. *Evans*, No. 25-1181, 2026 WL 1293294 (8th Cir. May 12, 2026)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has decided not to seek further review of the above-referenced decision of the United States Court of Appeals for the Eighth Circuit. A copy of the decision is attached.

A federal grand jury charged Antonio Rayshaun Evans with various offenses, including one count of conspiring to distribute a controlled substance, in violation of 21 U.S.C. 841(a)(1), 841(b)(1)(A), and 846; and one count of distributing a controlled substance, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A). Third Superseding Indictment 1-2. A violation of Section 841(b)(1)(A) carries a default minimum term of imprisonment of 10 years. 21 U.S.C. 841(b)(1)(A). But if the violation occurs "after a prior conviction for a serious drug felony," the statutory minimum term of imprisonment is 15 years. *Ibid.* For an offense to qualify as a "serious drug felony," it must be an offense described in 18 U.S.C. 924(e)(2)—such as "an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance * * * , for which a maximum term of imprisonment of ten years or more is prescribed by law." 18 U.S.C. 924(e)(2)(A)(ii); see 21 U.S.C. 802(58). In addition, the government must prove two incarceration-related facts: that the offense was one "for which * * * (A) the offender served a term of imprisonment of more than 12 months; and (B) the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense." 21 U.S.C. 802(58).

Before trial, the government filed an information giving notice of its intent to seek enhanced penalties based on Evans's 2015 conviction under Iowa law for possessing a controlled substance with intent to deliver. D. Ct. Doc. 99, at 2 (Jan. 16, 2024). The government argued that the jury should be permitted to determine the incarceration-related facts at trial. D. Ct. Doc. 162, at 6 (Sept. 11, 2024). The district court rejected that argument, expressing the view that those facts were for the court, not the jury, to determine. *Id.* at 5. The jury found Evans guilty of the offenses charged. D. Ct. Doc. 127 (Jan. 26, 2024).

After the verdict, the district court concluded, in light of the Supreme Court's intervening decision in *Erlinger* v. *United States*, 602 U.S. 821 (2024), that the Sixth Amendment required

that the incarceration-related facts be determined by a jury, and that it had plainly erred in declining to allow the jury to determine those facts at trial. D. Ct. Doc. 162, at 7-11. The district court took the view, however, that it could not empanel a new jury to determine those facts without violating 21 U.S.C. 851. D. Ct. Doc. 183, at 12-18 (Dec. 30, 2024). The court construed 21 U.S.C. 851 to require determination of the incarceration-related facts at a hearing "before the court without a jury," 21 U.S.C. 851(c)(1), if a defendant challenges those facts in a response filed "after conviction but before pronouncement of sentence," 21 U.S.C. 851(b); see D. Ct. Doc. 183, at 13. And the court found that Evans had triggered Section 851's hearing requirement by filing such a challenge after the jury's verdict. D. Ct. Doc. 183, at 9-10. The court concluded that "in the unique and likely never again to be repeated posture" of this case—where the jury had not been asked to find the incarceration-related facts—those facts could not be determined without violating Section 851 or the Sixth Amendment's jury-trial right, and therefore Evans had to be sentenced without the enhanced penalties. *Id.* at 15; see *id.* at 15-18.

On interlocutory appeal, the court of appeals affirmed. Op. 1-7. The court agreed that, "at this stage in these proceedings," Op. 4, Section 851 required determination of the incarceration-related facts by a "court without a jury," 21 U.S.C. 851(c)(1); see Op. 4-5. The court also agreed that the Sixth Amendment rendered Section 851 "unconstitutional as applied to Evans," Op. 7, because it "requires a jury to find the incarceration-related facts before the enhanced mandatory minimum can be applied," Op. 4. The court of appeals therefore concluded that "the district court rightly decided it cannot apply the enhanced mandatory minimum to Evans in this case without violating either his Sixth Amendment rights or § 851." Op. 5. Judge Stras dissented, expressing the view that a district court may hold a jury trial in compliance with the Sixth Amendment even when Section 851 prohibits one. Op. 8-12.

The Department of Justice has determined that the court of appeals' decision does not warrant further review. The constitutional issue in this case arose only because the district court concluded—in light of the Supreme Court's intervening decision in *Erlinger*—that it had "clearly erred" in not allowing the jury to determine the incarceration-related facts at trial. D. Ct. Doc. 162, at 11; see *id.* at 7. Now that *Erlinger* has been on the books for nearly two years, such an error is unlikely to recur in future cases. In particular, the court of appeals made clear that if the district court had "submitted, and the jury [had] found, the incarceration-related facts during Evans's trial," "the district court could have relied on the jury's findings," "without violating either the Sixth Amendment or § 851." Op. 6. The court of appeals' decision is thus unlikely to have significant implications beyond the "unique" posture of this case. D. Ct. Doc. 183, at 15. Moreover, Evans will face the same advisory Sentencing Guidelines range of 30 years to life imprisonment on the offenses at issue here, regardless of whether an enhanced mandatory minimum applies.

A petition for rehearing en banc in this case would be due on June 25, 2026, and a petition for a writ of certiorari would be due on August 10, 2026. Please let me know if I can be of further assistance in this matter.

Sincerely,

D. John Sauer

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Solicitor General