

No. _____

IN THE
Supreme Court of the United States

TYRONE ROBINSON
Petitioner,

v.

UNITED STATES

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

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

1. Pursuant to Supreme Court Rule 13.5, Petitioner Tyrone Robinson respectfully requests a 59-day extension of time, to and including Thursday, October 12, 2023, within which to file a petition for a writ of certiorari. The United States Court of Appeals for the Eighth Circuit issued its opinion on March 31, 2023. A copy of the opinion is attached as Exhibit A. The Eighth Circuit denied Petitioner's timely rehearing petition in an order issued on May 15, 2023. A copy of the order is attached as Exhibit B. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, a petition for writ of certiorari would be due on August 14, 2023. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case presents an important issue of federal sentencing law under the United States Sentencing Guidelines. Members of this Court have expressed concern that the circuits are split on the question presented in this petition for certiorari — the meaning of “controlled substance offense” in U.S.S.G. § 4B1.2(b). *See Guerrant v. United States*, 142 S.Ct. 640, 641 (2022) (Statement of Sotomayor, J., and Barrett, J., respecting denial of certiorari). The circuit split is still causing defendants like petitioner to be “subject to far higher terms of imprisonment for the same offenses as compared to defendants similarly situated” based solely on the happenstance of geography. *Id.* Approximately 18 months ago, in January 2022, this Court implored that it was the “responsibility of the Sentencing Commission” to resolve this circuit split. *Id.* But the Sentencing Commission still hasn’t done its job, and it is unclear if and when it will.

4. The Eighth Circuit has incorrectly held that because the definition of “controlled substance offense” in U.S.S.G. § 4B1.2(b) begins with the phrase “[a]n offense under federal or state law,” this means that any such offenses qualify. *United States v. Henderson*, 11 F.4th 713, 718-19 (8th Cir. 2021). This is wrong, as pointed out by the Second Circuit, because “to do so would undermine the presumption that federal standards define federal sentencing provisions.” *United States v. Townsend*, 897 F.3d 66, 70-71 (2nd Cir. 2018). *Id.* “Because the Guidelines presume the application of federal standards unless they explicitly provide

otherwise, the ambiguity in defining ‘controlled substance’ must be resolved according to federal—not state—standards.” *Id.* When interpreting the Guidelines, which “represent the Federal Government’s authoritative view of the appropriate sentence for specific crimes,” *Peugh v. United States*, 569 U.S. 530, 545 (2013), this Court “must generally assume, in the absence of a plain indication to the contrary, that” their application does not “depend[] on state law.” *Jerome v. United States*, 318 U.S. 101, 104 (1943). The *Jerome* presumption should be applied to resolve this circuit split.

5. Mr. Robinson timely sought rehearing or rehearing en banc, seeking reconsideration of the same question presented here. The Eighth Circuit denied rehearing by the panel, and rehearing en banc. See Exhibit B.

6. Petitioner respectfully requests an extension of time to file a petition for a writ of certiorari. Undersigned counsel has a number of pending matters with proximate due dates that will interfere with counsel’s ability to file the petition on or before August 14, 2023. Specifically, in August, counsel currently has two pending brief deadlines in the Eighth Circuit Court of Appeals: *United States v. Hardin*, 23-2576 (due on August 9) in *United States v. Taylor* (due August 23). Counsel also has a variety of other pending deadlines in the United States District Court for the Western District of Missouri.

Wherefore, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including October 12, 2023.

Respectfully submitted,

LAINÉ CARDARELLA
Federal Public Defender
Western District of Missouri

/s/ Daniel P. Goldberg
Daniel P. Goldberg
Counsel of Record
1000 Walnut, Suite 600
Kansas City, Missouri 64106
Tel: (816) 471-8282
Dan_Goldberg@fd.org

Counsel for Petitioner

EXHIBIT A

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-3646

United States of America

Plaintiff - Appellee

v.

Tyrone Robinson, also known as Tyrone R. Robinson

Defendant - Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:20-cr-00188-GAF-1)

JUDGMENT

Before SHEPHERD, GRASZ, and KOBES, Circuit Judges.

The Appellee's Motion for Summary Affirmance and Appellant's Response have been considered by the court, and the motion for summary affirmance is granted. The district court's judgment is affirmed.

March 31, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

EXHIBIT B

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 22-3646

United States of America

Appellee

v.

Tyrone Robinson, also known as Tyrone R. Robinson

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:20-cr-00188-GAF-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

May 15, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans