

No. _____

IN THE
Supreme Court of the United States

CYRANO R. IRONS,
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 Cyrano R. Irons respectfully requests a 50-day extension of time, to and including Tuesday, September 13, 2022, 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 23, 2022. A copy of the opinion is attached as Exhibit A. The Eighth Circuit denied Petitioner's timely rehearing petition in an order issued on April 26, 2022. 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 July 25, 2022. 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 over which the courts of appeals have deeply split: whether all errors in calculating the Sentencing Guidelines are rendered harmless under Federal Rule of Criminal Procedure Rule 52(a), when the district court asserts that the Guidelines would make no difference to the choice of sentence. Under the Eighth and Eleventh Circuit's rule, when the district court states it would have imposed the same sentence regardless of the Guidelines, *any* error by the sentencing court is rendered categorically harmless. *United States v. Peterson*, 887 F.3d 343, 349 (8th Cir. 2018) (“When the district court explicitly states that it would have imposed the same sentence of imprisonment regardless of the underlying Sentencing Guideline range, any error on the part of the district court is harmless.”); *United States v. Henry*, 1 F.4th 1315, 1327 (11th Cir. 2021) (“Because the district court stated on the record that it would have imposed the same sentence either way, that is all we need to know to hold that any potential error was harmless.”).

In petitioner's case, the Eighth Circuit did not reach the sole issue raised on appeal of whether Mr. Irons' Guidelines range was properly calculated. Rather, it concluded that it did not need to determine whether the Guidelines were correctly calculated because any error was harmless. Exhibit A, pg. 2. The Eighth Circuit noted, in two sentences of analysis, that the district court “explained that ‘notwithstanding any of these *** calculations, if [Irons] had won every one of the

[objections] advanced, [it] would [have] come out in the same place because of 18 U.S.C. [§] 3553(a),’ meaning that Irons’ sentence was based on the statutory sentencing factors rather than the allegedly erroneous criminal-history calculation.” *Id.*, quoting district court. The panel reasoned “[t]his is as clear a statement as any that Irons would have received the same sentence regardless of which criminal-history score applied.” *Id.*

But had petitioner been sentenced in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth or Tenth Circuits, a different, more probing harmless error test would have been engaged on appeal. *United States v. Ouellette*, 985 F.3d 107, 110-111 (1st Cir. 2021); *United States v. Seabrook*, 968 F.3d 224, 233–34 (2d Cir. 2020); *United States v. Hester*, 910 F.3d 78, 91 (3d Cir. 2018); *United States v. Gomez*, 690 F.3d 194, 203 (4th Cir. 2012); *United States v. Tanksley*, 848 F.3d 347, 353 (5th Cir. 2017); *United States v. Collins*, 800 F. App’x 361, 362 (6th Cir. 2020); *United States v. Asbury*, 27 F.4th 576, 581 (7th Cir. 2022); *United States v. Williams*, 5 F.4th 973, 978 (9th Cir. 2021); *United States v. Porter*, 928 F.3d 947, 963 (10th Cir. 2019).

In the majority of these circuits (Second, Third, Fifth, Seventh, Ninth, and Tenth Circuits) petitioner’s case would have been reversed and remanded for a new sentencing hearing based on this record, because a Guidelines error is not rendered harmless in those circuits merely because the district court states it would have sentenced the defendant to the same sentence regardless of the Guidelines. *Id.* And in the First, Fourth, and Sixth Circuits, before petitioner’s sentence would have been affirmed by the reviewing court based on harmless error under these

circumstances, the circuit court would have at least determined whether petitioner's sentence was otherwise substantively reasonable. *Id.*

4. Mr. Irons 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.

5. This case raises important concerns because thousands of sentencing hearings occur in federal court each year. To date, this Court has never decided how reviewing courts should determine whether an advisory Guidelines miscalculation is harmless error under Rule 52(a).

6. Petitioner respectfully requests an extension of time to file a petition for a writ of certiorari. After the Eighth Circuit issued its order denying rehearing, undersigned counsel has brought in dedicated Supreme Court counsel to assist in the representation of this matter. Additionally, undersigned counsel has a number of pending matter with proximate due dates that will interfere with counsel's ability to file the petition on or before July 25.

Specifically, counsel must travel to St. Louis, Missouri, for oral argument before the Eighth Circuit on June 17, 2022 in *United States v. Myers*, 21-3443. Counsel also has an opening brief due on June 23, 2022 before the Eighth Circuit in *United States v. Shields*, 22-1891, and another opening brief due on June 30, 2022 before the Eighth Circuit in *United States v. Colbert*, 22-2120. Undersigned counsel is also scheduled to go on vacation with his family from June 25 to July 5. Finally, counsel has 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 September 13, 2022.

Respectfully submitted,

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EXHIBIT A

United States Court of Appeals
For the Eighth Circuit

No. 21-2750

United States of America

Plaintiff - Appellee

v.

Cyrano R. Irons

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: January 14, 2022

Filed: March 23, 2022

[Unpublished]

Before BENTON, SHEPHERD, and STRAS, Circuit Judges.

PER CURIAM.

Cyrano Irons, who pleaded guilty to a firearm offense, challenges the criminal-history score assigned at sentencing. Over Irons's objection, the district court¹ added two points for a pair of armed-criminal-action convictions. *See* Mo. Rev. Stat. § 571.015. We affirm.

¹The Honorable David G. Kays, United States District Judge for the Western District of Missouri.

Even if we assume that the district court made a mistake in counting those two offenses, any error was harmless. *See United States v. Woods*, 670 F.3d 883, 886 (8th Cir. 2012) (explaining that a computational error is “harmless” if it “did not substantially influence the outcome of the sentencing proceeding” (quotation marks omitted)). At the sentencing hearing, the court explained that “notwithstanding any of these . . . calculations, if [Irons] had won every one of the [objections] advanced, [it] would [have] come out in the same place because of 18 U.S.C. [§] 3553(a),” meaning that Irons’s sentence was based on the statutory sentencing factors rather than the allegedly erroneous criminal-history calculation. This is as clear a statement as any that Irons would have received the same sentence “regardless of which [criminal-history score] applied.” *United States v. Staples*, 410 F.3d 484, 492 (8th Cir. 2005); *see United States v. McGee*, 890 F.3d 730, 737 (8th Cir. 2018) (holding that a similar error was harmless).

We accordingly affirm the judgment of the district court.

EXHIBIT B

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

No: 21-2750

United States of America

Appellee

v.

Cyrano R. Irons

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:19-cr-00390-DGK-1)

ORDER

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

April 26, 2022

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

/s/ Michael E. Gans