

**FEDERAL PUBLIC DEFENDER**  
**Southern District of Texas**

Lyric Office Centre  
440 Louisiana Street, Suite 1350  
Houston, Texas 77002-1669

**FEDERAL PUBLIC DEFENDER:**  
**MARJORIE A. MEYERS**

**Telephone:**  
**713.718.4600**

February 22, 2023

**First Assistant:**  
**MICHAEL L. HERMAN**

**Fax:**  
**713.718.4610**

**BY ELECTRONIC FILING**

Mr. Scott S. Harris, Clerk  
Supreme Court of the United States  
1 First Street NE  
Washington, D.C. 20543

Re: *Nonami Palomares v. United States*, No. 22-6391

Dear Mr. Harris:

Petitioner wishes to alert the Court to an opinion of the Fourth Circuit filed yesterday (February 21) that has further widened the circuit split on the question presented.

In *United States v. Jones*, No. 21-4605, 2023 WL 2125134 (4th Cir. Feb. 21, 2023), the sole issue on appeal was “whether the word ‘and’ in [18 U.S.C.] § 3553(f)(1) connecting the criminal history characteristics applies conjunctively or disjunctively.” *Id.* at \*1. The Fourth Circuit concluded that “and” is conjunctive. *Id.* Accordingly, it held that § 3553(f)(1) “requires a sentencing court to find that a defendant has all three of the listed criminal history characteristics before excluding a defendant from safety valve eligibility.” *Id.* at \*8.

After *Jones*, the circuit split is now 4-3 (with the Fifth, Sixth, Seventh and Eighth Circuits on one side, and the Fourth, Ninth, and Eleventh Circuits on the other). *See id.* at \*2 n.2 (acknowledging the split).

Very truly yours,

/s/ Scott A. Martin

SCOTT A. MARTIN

Assistant Federal Public Defender  
Southern District of Texas

cc: Office of the Solicitor General  
(via E-Mail and Notice of Electronic Filing)