No. _____

SUPREME COURT OF THE UNITED STATES

AARON HAYNES

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

---

s/Rachel L Wolf
Rachel L Wolf (BPR # 026034)
Counsel for Petitioner
706 Walnut St., Suite 401
Knoxville, TN 37902
(865) 325-965

QUESTION PRESENTED

The "safety valve" provision of the federal sentencing statute requires a district court to ignore any statutory mandatory minimum and instead follow the Sentencing Guidelines if a defendant was convicted of certain nonviolent drug crimes and can meet five sets of criteria. See 18 U.S.C. § 3553(f)(1)–(5). Congress Amended the first set of criteria, in § 3553(f)(1), in the First Step Act of 2018, Pub. L. No. 115-391, § 402, 132Stat. 5194, 5221, broad criminal justice and sentencing reform legislation designed to provide a second chance for nonviolent offenders. A defendant satisfies§ 3553(f)(1), as amended, if he "does not have—(A)more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;(B) a prior 3-point offense, as determined under the sentencing guidelines; and (C) a prior 2-point violent offense, as determined under the sentencing guidelines." 18 U.S.C. § 3553(f)(1) (emphasis added).

The question presented is whether the "and" in 18 U.S.C. § 3553(f)(1) means "and," so that a defendant satisfies the provision so long as he does not have(A) more than 4 criminal history points, (B) a 3-point offense, and (C) a 2-point offense (as the Fourth and Ninth and Eleventh Circuits Hold), or whether the "and" means "or," so that a defendant satisfies the provision so long as he does not have (A) more than 4 criminal history points, (B) a 3-point offense, or (C) a 2-point violent offense (as the Fifth, Seventh, and Eighth Circuits hold).

RELATED PROCEEDINGS

United States Court of Appeals (6th Cir.):

United States v. Haynes, No. 22-5132 (December 19, 2022)

United States District Court (E.D. Tennessee):

United States v. Haynes, No. 3:19-CR-207 TAV-HBG (Feb. 7, 2022)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

STATUTES AND GUIDELINES

OPINIONS BELOW

The court of appeals' opinion (App. 1a-9a) is reported at 55 F.4th 1075. The district court's judgment (App. 10a-23a) and the sentencing transcript (App. 24a-47a) are unpublished.

JURISDICTION

The court of appeals entered its judgment on December 19, 2022. The Court has Jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 3553(f) of Title 18, U.S. Code, provides:

LIMITATION ON APPLICABILITY OF STATUTORY MINIMUMS IN CERTAIN CASES.—Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846), section1010 or 1013 of the Controlled Substances Import And Export Act (21 U.S.C. 960, 963), or section 70503 or 70506 of title 46, the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

(1) the defendant does not have—
  (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;
  (B) a prior 3-point offense, as determined under the sentencing guidelines; and
  (C) a prior 2-point violent offense, as determined under the sentencing guidelines;
(2) the defendant did not use violence or credible threats of violence or possess

> a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
> (3) the offense did not result in death or serious bodily injury to any person;
> (4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and
> (5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement. Information disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense.

STATEMENT

A. Statutory background

1. Under the "safety valve" provision of the federal sentencing statute, 18 U.S.C. § 3553(f), district courts "shall impose a sentence" under the United States Sentencing Guidelines and "without regard to any statutory minimum sentence" on qualifying defendants. A defendant qualifies if he was convicted of certain nonviolent drug crimes and can meet the criteria in § 3553(f)(1) through (5). For example, the defendant must not have "use[d] violence or credible threats of violence," or a firearm, "in connection with the offense," id. § 3553(f)(2), and the offense must not have resulted in death or serious bodily injury, id. § 3553(f)(3). The defendant also must have "truthfully provided to the Government all information and evidence" he has about the offense or related offenses. Id. § 3553(f)(5).

The question presented concerns the criteria in § 3553(f)(1), which focuses on the defendant's prior criminal history "as determined under the sentencing

guidelines." Before § 3553(f)(1) was amended by the First Step Act of 2018, § 402, 132 Stat. at 5221, a defendant had to show that he did "not have more than 1 criminal history point." 18 U.S.C. § 3553(f)(1) (2017). The First Step Act broadened eligibility for relief. As amended, § 3553(f)(1) reaches a defendant who "does not have—(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1- point offense … ; (B) a prior 3-point offense … ; and (C) a prior 2-point violent offense." 18 U.S.C. § 3553(f)(1)(A)–(C) (emphasis added). The question presented is whether the term "and" carries a conjunctive or disjunctive meaning. In other words, does a defendant satisfy § 3553(f)(1) unless he has (A), (B), and (C), or must he have none of (A), (B), or (C)?

B. Factual and procedural background

Mr. Haynes pled guilty to one count of distributing at least 40 grams of Fentanyl, and 100 grams or More of Heroin, in violation of 21 U.S.C. § 841(a)(1). He was subject to a mandatory minimum sentence of 10 years, 21 U.S.C. § 841(b)(1)(A), unless the safety valve applied.

The safety-valve inquiry turned on § 3553(f)(1) alone. Mr. Haynes had one 3-point offense under § 3553(f)(1)(B), but not more than 4 criminal history points or a 2-point violent offense under § 3553(f)(1)(C). Presentence Investigation Report (PSR) ¶¶ 32-41, pp. 8-11; Haynes C.A. Br. 4-5; see also App. 2a. Mr. Haynes therefore contended that he satisfied § 3553(f)(1) because he did "not have—(A) more than 4 criminal history points … , (B) a prior 3-point offense … ; and (C) a prior 2-point violent offense." 18 U.S.C. § 3553(f)(1) (emphasis added).

The district court rejected Mr. Haynes' argument, concluding that he was ineligable for safety-valve. App. 7a. The Court applied the Government's distributive interpretation because it was "logically coherent" and avoided surplusage. App. 6a-7a. Thus, after making an unrelated sentencing reduction, the court sentenced Mr. Haynes to 32 months' imprisonment. App. 18a, 48a.

2. a. The court of appeals affirmed. The Court applied the Government's distributive interpretation because it was "logically coherent" and avoided surplusage. App. 6a-7a

In the court's view, § 3553(f)(1)(A) through (C) should be read distributively, such that a defendant must show that he does not have (A) more than 4 points, (B) a 3-point offense, or (C) a 2-point violent offense. Id. According to the court of appeals, reading "and" jointly—such that a defendant must have (A), (B), and (C) before he is ineligible for relief—would make (A), the more-than-4-points requirement, superfluous. Id. The court reasoned that a defendant with a 3-point offense under (B) and a 2-point violent offense under (C) would always have more than 4 points under (A). *Id*. Reading the statute distributively, in contrast, would give (A) independent force by disqualifying a defendant who does not meet (B) or (C). App. 6a-7a.

The court of appeals' Majority opinion did not address Mr. Haynes' argument that the presumption of consistent usage supported reading "and" conjunctively because the word "and" connects § 3553(f)(1) through (5). Likewise it did not address his reliance on the rule of lenity. App. 2a-7a

REASONS FOR GRANTING THE PETITION

The Fourth, Ninth, and en banc Eleventh Circuits have held that "and" in 18 U.S.C. § 3553(f)(1) is conjunctive, while the Fifth, Sixth, Seventh, and Eighth Circuits have held that "and" means "or." (*United States v. Jones*, No. 21-4605, 2023 WL 2125134(4th Cir. 2023) *United States v. Garcon*, 54 F.4th 1274 (11th Cir.2022) (en banc); and United States v. Lopez, 998 F.3d431 (9th Cir. 2021), as adopting the conjunctive reading and *United States v. Palomares*, 52 F.4th 640 (5th Cir. 2022); *United States v. Haynes,* 55 F.4th 1075 (6th Cir. 2022); *United States v. Pace*, 48 F.4th 741 (7th Cir. 2022); and *United States v. Pulsifer*, 39 F.4th 1018 (8th Cir. 2022), as adopting the disjunctive reading). The deepening split confirms the urgent need for this Court's intervention.

This case presents the same issue as a case in which this Court has granted certiorari; *United States v. Pulsifer*, 39 F.4th 1018 (8th Cir. 2022), *cert. granted*, Feb. 26, 2023, (No. 22-340). In *Pulsifer v. United States*, the Court granted certiorari to consider

> "whether the "and" in 18 U.S.C. § 3553(£)(1) means "and," so that a defendant satisfies the provision so long as he does not have (A) more than 4 criminal history points, (B) a 3-point offense, and (C) a 2-point offense (as the Ninth Circuit holds), or whether the "and" means "or," so that a defendant satisfies the provision so long as he does not have (A) more than 4 criminal history points, (B) a 3- point offense, or (C) a 2-point violent offense (as the Seventh and Eighth Circuits hold)."

Thus, this Court has already determined that the question presented by Petitioner's case is of great importance. For the same reasons that the Court granted certiorari in *Pulsifer*, Petitioner requests that the Court grant certiorari in his case.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the petition should be held pending this Court's decision in *Pulsifer v. United States*.

Respectfully submitted.

s/Rachel L Wolf
Rachel L Wolf (BPR # 026034)
Counsel for Petitioner
706 Walnut St., Suite 401
Knoxville, TN 37902
(865) 325-965

March 17th, 2023