

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

JAQUANTIOUS HUTCHISON,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

The Safety Valve provision, 18 U.S.C. § 3553(f), instructs district courts to sentence under the guidelines without regard to any statutory mandatory minimum in certain cases. Along with four other requirements, a defendant satisfies § 3553(f)(1), as amended, if he “does not have—(A) more than four 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) (emphasis added).

The question presented is whether the “and” in § 3553(f)(1) is conjunctive, so that a defendant satisfies that provision as long as he does not meet the criteria in (A), (B), *and* (C), or whether the “and” means “or,” so that a defendant satisfies that provision only if he does not meet the criteria in (A) or (B) or (C)?

## RELATED PROCEEDINGS

United States Court of Appeals (5th Cir.):

*United States v. Hutchison*, 21-51188 (May 8, 2023)

United States District Court (W.D. Tex.):

*United States v. Hutchison*, No. 3:20-cr-02333-FM-3 (Dec. 3, 2021)

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## **PETITION FOR A WRIT OF CERTIORARI**

This case turns on whether the word “and” in 18 U.S.C. § 3553(f)(1) is conjunctive or disjunctive. This Court granted certiorari in *Pulsifer v. United States*, 143 S. Ct. 978 (2023) (No. 22-340), to resolve the same question. The Court should accordingly hold this petition for a writ of certiorari pending its decision in *Pulsifer* and then dispose of the petition as appropriate in light of that decision.

### **OPINIONS BELOW**

The court of appeals’ opinion (App. 1a-2a) is unpublished. The district court’s judgment (App. 3a-9a) and the sentencing transcript (App. 10a-19a) are also unpublished.

### **JURISDICTION**

The judgment of the court of appeals was entered on May 8, 2023. This 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), section 1010 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 OF THE CASE**

### **A. Statutory background**

The “Safety Valve” in 18 U.S.C. § 3553(f) directs a sentencing court to sentence in accordance with the applicable sentencing guidelines and without regard to any statutory mandatory minimum if the defendant meets the criteria in § 3553(f)(1)

through (f)(5). Congress amended § 3553(f)(1) in the First Step Act of 2018, Pub. L. No. 115-391, § 402, 132 Stat. 5194, 5221. As amended, a defendant now satisfies § 3553(f)(1) if:

(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[.]

18 U.S.C. § 3553(f)(1).

## **B. Factual and procedural background**

Petitioner pled guilty, pursuant to a plea agreement, to the offense of possession with intent to distribute 5 kilograms or more of cocaine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(ii). App. 1a. Petitioner's guidelines punishment range was 70 to 87 months, but unless the Safety Valve applied, he was subject to a mandatory minimum sentence of 10 years, 21 U.S.C. § 841(b)(1)(A).

As for the Safety Valve, the only dispute below was whether Petitioner qualified under § 3553(f)(1). App. 12a. Petitioner's criminal history did not trigger subsections (B) or (C). That is, he did not have a prior 3-point offense or a prior 2-point violent offense. Petitioner did, however, satisfy subparagraph (A) because he had more than 4 criminal history points. App. 12a.

At sentencing, the district court applied § 3553(f)(1) disjunctively, meaning that Petitioner's criminal history would disqualify him from Safety Valve relief if he

satisfied any one of the conditions in subsections (A), (B), or (C). And because Petitioner admittedly had more than 4 criminal history points, the district court found him ineligible for the Safety Valve and sentenced him to the mandatory minimum sentence of 10 years. App. 12a, 16a.

The Court of Appeals for the Fifth Circuit affirmed. App. 1a-2a. The Fifth Circuit acknowledged that this Court had granted certiorari “on this issue.” App. 2a (citing *United States v. Pulsifer*, 39 F.4th 1018 (8th Cir. 2022), *cert. granted*, 143 S. Ct. 978 (2023)). But it held that Petitioner’s argument for reading the “and” in § 3553(f)(1) conjunctively had been foreclosed by the Fifth Circuit’s recent decision in *United States v. Palomares*, 52 F.4th 640 (5th Cir. 2022), *cert. filed* No. 22-6391.

## **REASONS FOR GRANTING THE WRIT**

This Court granted certiorari in *Pulsifer v. United States*, 143 S. Ct. 978 (2023) (No. 22-340), to consider whether the provisions of § 3553(f)(1) should be read conjunctively or disjunctively. This case turns on that exact question.

The court below affirmed Petitioner’s sentence based on *Palomares*, 52 F.4th at 647, which held that defendants are “ineligible for safety valve relief if they run afoul of any one of [§ 3553(f)(1)’s] requirements.”

The Sixth, Seventh, and Eighth Circuits agree with the Fifth Circuit’s reading. See *United States v. Haynes*, 55 F.4th 1075 (6th Cir. 2022); *United States v. Pace*, 48 F.4th 741 (7th Cir. 2022); *United States v. Pulsifer*, 39 F.4th 1018 (8th Cir. 2022). But the Fourth, Ninth, and Eleventh Circuits disagree. See *United States v. Jones*, 60 F.4th 230 (4th Cir. 2023); *United States v. Lopez*, 998 F.3d 431 (9th Cir. 2021); *United*

*States v. Garcon*, 54 F.4th 1274 (11th Cir. 2022) (en banc). Those courts hold that “§ 3553(f)(1) uses ‘and’ as a conjunctive, thereby requiring the district court to find that a defendant has all three listed criminal history characteristics before determining that the defendant is disqualified from safety valve application.” *Jones*, 60 F.4th at 235.

This Court’s decision in *Pulsifer* will determine whether the courts below properly applied § 3553(f)(1) in Petitioner’s case. The Court should therefore hold this petition until it has decided *Pulsifer* and then dispose of the petition in accordance with that decision.

## **CONCLUSION**

The petition for a writ of certiorari should be held pending this Court’s decision in *Pulsifer v. United States*, 143 S. Ct. 978 (2023) (No. 22-340), and then disposed of as appropriate in light of that decision.

Respectfully submitted,

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