

22-340 PULSIFER V. UNITED STATES

DECISION BELOW: 39 F.4th 1018

LOWER COURT CASE NUMBER: 21-1609

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, 132 Stat. 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 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).

ORDER OF 10/2/2023: THE MOTION OF PETITIONER FOR LEAVE TO PROCEED FURTHER HEREIN *IN FORMA PAUPERIS* AND FOR APPOINTMENT OF COUNSEL IS GRANTED. J. ROBERT BLACK, OF OMAHA, NEBRASKA, IS APPOINTED TO SERVE AS COUNSEL FOR THE PETITIONER IN THIS CASE.

CERT. GRANTED 2/27/2023