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Legal Sidebar

Supreme Court Clarifies Scope of Drug Offense Sentencing Relief Under the First Step Act

April 4, 2024

In *Pulsifer v. United States*, the Supreme Court resolved a question that had divided federal courts of appeals: what is the scope of eligibility for certain federal drug defendants seeking a sentence below a mandatory minimum under the First Step Act? In *Pulsifer*, the Court adopted the government's preferred reading of the First Step Act, construing the eligibility criteria in a way that limits the universe of federal defendants who may obtain relief from a mandatory minimum sentence for certain drug offenses.

This Sidebar examines the *Pulsifer* case and its implications. It offers a general overview of mandatory minimum sentencing for federal drug crimes; addresses the contents of and justifications for the First Step Act's expansion of the "safety valve," which gives federal judges the discretion to disregard a mandatory minimum when imposing a sentence for certain drug crimes; discusses the disagreement among the federal appeals courts as to the eligibility criteria for the safety valve; and examines the Supreme Court's ruling in *Pulsifer*. The Sidebar closes with considerations for Congress.

Mandatory Minimum Sentences for Certain Federal Drug Offenses

Congress enacts federal criminal statutes and can also establish the penalties for violations of these statutes. Congress may set mandatory minimum and maximum penalties that form the statutory floor and ceiling, respectively, of permissible federal criminal sentences. Mandatory minimum sentences require judges to impose a term of imprisonment of at least the length specified in the statute, a requirement generally triggered by the offense of conviction and/or the defendant's recidivism.

Mandatory minimums have existed throughout American history, with examples stretching as far back as at least 1790. In the context of drug offenses, Congress introduced the first federal mandatory minimum in 1914—a five-year penalty related to the manufacture of opium for purposes of smoking. Congress subsequently enacted other mandatory minimums for drug offenses, such as a 10-year mandatory minimum for selling heroin to juveniles enacted in 1956.

In 1970, Congress repealed almost all drug laws, including mandatory minimums for drug crimes. In their place, Congress enacted the Controlled Substances Act (CSA), a comprehensive regulatory regime for

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LSB11145

drugs and other substances deemed to pose a risk of abuse and dependence. As discussed in more detail in a separate CRS product, the CSA generally establishes registration and recordkeeping requirements for authorized activities involving controlled substances and creates criminal offenses and penalties related to unauthorized activities. As relevant here, the CSA established criminal offenses for unauthorized possession with intent to distribute a controlled substance (21 U.S.C. § 841), simple possession of a controlled substance (21 U.S.C. § 844), and attempt or conspiracy to commit a covered controlled substance offense (21 U.S.C. § 846). A companion law also enacted in 1970, the Controlled Substances Import and Export Act (CSIEA), set forth additional criminal offenses, including for importing or exporting controlled substances without authorization (21 U.S.C. § 960) and for attempting or conspiring to commit a covered offense (21 U.S.C. § 963). The two statutes contained a single mandatory minimum, for engaging in a continuing criminal drug enterprise.

In the 1980s, Congress enacted mandatory minimums for each of the three primary offenses listed above (21 U.S.C. § 841; 21 U.S.C. § 844; 21 U.S.C. § 960). The penalties for the attempt and conspiracy offenses—21 U.S.C. § 846 and 21 U.S.C. § 963—reference the penalties for the underlying offenses, and thus the mandatory minimums for the three primary offenses also apply to these inchoate offenses.

In 2006, Congress made it a crime to "intentionally or knowingly manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance on board" specific vessels (46 U.S.C. § 70503). Congress further provided that a defendant who is convicted of this crime faces the mandatory minimum specified in 21 U.S.C. § 960 (46 U.S.C. § 70506).

In general, whether a defendant is subject to a mandatory minimum for a federal drug offense depends on the quantity and type of controlled substance involved in the offense. Different types of controlled substance at issue (e.g., cocaine, fentanyl, marijuana) may have a different threshold quantity to trigger a mandatory minimum. For example, under 21 U.S.C. § 841, a five-year mandatory minimum applies if a defendant possesses with intent to distribute 100 grams of heroin or 100 kilograms of marijuana. That is, compared to heroin, 1,000 times the amount of marijuana would be required to give rise to the same five-year mandatory minimum.

The "Safety Valve" as Amended by the First Step Act

In the 1990s, Congress became concerned that mandatory minimum sentences were not adequately distinguishing between defendants of different levels of culpability. That is, Congress recognized that federal mandatory minimums could result in equally severe penalties for differently situated defendants. In response, in the Violent Crime Control and Law Enforcement Act of 1994, Congress enacted the first "safety valve," authorizing a federal judge to impose a sentence below an otherwise-applicable mandatory minimum sentence in certain circumstances. Under this statute, a federal judge could impose a sentence below the CSA drug-related mandatory minimums described above if the federal defendant satisfied five criteria, including not having "more than one criminal history point, as determined under the Sentencing Guidelines." The Guidelines, promulgated by the U.S. Sentencing Commission, are designed to promote uniformity in federal sentencing by providing federal judges with sentencing ranges generally based on the offense and the defendant's criminal history. According to the Sentencing Guidelines, a defendant's criminal history is reflected in points, and the computation of these points depends on the nature and number of prior offenses. The Guidelines generally assign more points to more serious prior offenses.

In 2018, Congress enacted the First Step Act based on findings about the increasing size of the federal prison population and the economic and social consequences of this growth. Among other things, the First Step Act expanded eligibility for safety-valve relief to defendants with more significant criminal histories. Whereas only federal defendants with one or zero criminal history points under the Sentencing Guidelines could receive relief under the earlier law, the First Step Act made drug offenders with relatively minor criminal records eligible for the safety-valve provision. As one court framed it, "The low threshold of

more than one criminal-history point resulted in many drug offenders receiving mandatory minimum sentences in instances that some in Congress believed were unnecessary and harsh. Congress recognized the problem and sought to give district courts more flexibility."

In particular, the First Step Act amended 18 U.S.C. § 3553(f)(1) to permit a federal defendant convicted of one of the drug offenses described above—under 21 U.S.C. §§ 841, 844, 846, 960, 963; or 46 U.S.C. §§ 70503, 70506—to receive a sentence below a mandatory minimum as long as, among other things,

> (1) the defendant does not have—
>
> > (A) more than four criminal history points, excluding any criminal history points resulting from a one-point offense, as determined under the Sentencing Guidelines;
> >
> > (B) a prior three-point offense; and
> >
> > (C) a prior two-point violent offense.

Circuit Split on the Scope of the Amended Safety Valve

Federal courts of appeals soon became divided on when, under the safety-valve provision as amended by the First Step Act, a federal defendant's criminal history disqualified him or her from safety-valve relief. The disagreement centered on whether defendants with any of the three listed criminal-history conditions (having more than four criminal history points, a prior three-point offense, *or* a prior two-point violent offense) would be deemed ineligible for the safety valve, or whether only defendants having all three conditions (more than four criminal history points, a prior three-point offense, *and* a prior two-point violent offense) would be ineligible. The U.S. Courts of Appeals for the Fourth, Ninth, and Eleventh Circuits held that only a defendant with all three conditions is ineligible for the safety valve. By contrast, the Fifth, Sixth, Seventh, and Eighth Circuits held that a defendant with any one of the three conditions is disqualified from safety-valve relief.

The Sentencing Commission studied the effect of the differing interpretations on the eligibility of federal defendants for safety-valve relief. Under the approach taken by the Fourth, Ninth, and Eleventh Circuits, the Commission found that, based on FY2021 data, 320 offenders would be ineligible for the safety valve. Under the distributive reading adopted by the Fifth, Sixth, Seventh, and Eighth Circuits, the Commission identified 4,111 offenders who would be ineligible.

The Supreme Court Decision

Background

On February 27, 2023, the Supreme Court granted review of the Eighth Circuit's decision in *United States v. Pulsifer*. The Eighth Circuit case under review arose out of the sentencing of Mark Pulsifer, who had pled guilty to distributing methamphetamine and had more than four criminal history points and a prior three-point offense but did not have a prior two-point violent offense. The district court determined that Pulsifer was ineligible for safety-valve relief because he satisfied at least one of the three criminal history conditions. The Eighth Circuit affirmed.

Before the Supreme Court, Pulsifer pressed a "conjunctive" interpretation of Section 3553(f)(1). He argued that based on a plain reading of Section 3553(f)(1), the use of "and" in surrounding statutory provisions, and congressional intent, the word "and" in Section 3553(f)(1) connects three conditions framed in the negative and thus disqualifies only a defendant with all three criminal-history conditions present. By contrast, the federal government made the "distributive" argument that to give meaning to each condition, avoid surplusage, and avert outcomes Congress could not have intended, the word "and"

distributes "does not have" to each of the criminal history conditions, meaning that a defendant with any of the conditions is disqualified from safety-valve relief.

On October 2, 2023, the Court held oral argument in the case and, on March 15, 2024, issued its decision.

Majority Opinion

The Supreme Court affirmed the Eighth Circuit decision, interpreting 18 U.S.C. § 3553(f)(1) in a distributive manner to disqualify a defendant from the safety valve if they have any one of the three enumerated conditions. In an opinion authored by Justice Kagan, the Court acknowledged that Pulsifer and the government presented two "grammatically permissible" ways to read Section 3553(f)(1). The Court determined that only the government's construction was "plausible," however, reasoning that Pulsifer's preferred reading would render the first condition superfluous. The Court explained that "if a defendant has a three-point offense under Subparagraph B and a two-point offense under Subparagraph C, he will always have more than four criminal history points under Subparagraph A," meaning that reading the provision to require all three for ineligibility would render Subparagraph A surplusage. The government's interpretation, by contrast, would give effect to each condition, the Court reasoned, allowing each to do "independent work." As the majority made clear, "Subparagraph A disqualifies defendants who have more than four criminal history points (excluding those from a one-point offense), even if they do not have a prior three-point offense or a prior two-point violent offense."

The Court next wrote that Section 3553(f)(1) helps ensure that more culpable defendants are not eligible to be sentenced in "a world free of mandatory minimums" and observed that the government's interpretation furthers Section 3553(f)(1)'s gatekeeping function. According to the Court, each condition blocks different categories of defendants with greater culpability from receiving relief: the first condition targets recidivists, the second captures defendants who have committed a serious offense, and the third covers defendants who have committed a violent offense. The Court was therefore persuaded that, under the government's reading, Section 3553(f)(1) "unerringly separates more serious prior offenders from less serious ones, allowing only the latter through the gate." The Court characterized Section 3553(f)(1) as "an eligibility checklist" that reserves safety-valve relief only for defendants that satisfy "each of the paragraph's three conditions."

The Court took note of the argument that Congress in the First Step Act generally sought to make safety-valve relief more "readily available," but the Court responded that this argument did not override an analysis of the text of the statute and that the government's reading still expands access to safety-valve relief (albeit not to the degree advanced by Pulsifer). In the end, the Court affirmed the Eighth Circuit's ruling that Pulsifer was not eligible for safety-valve relief.

Dissenting Opinion

Justice Gorsuch issued a dissenting opinion, which was joined by Justices Sotomayor and Jackson. In the dissent, Justice Gorsuch argued, among other things, that "an ordinary reader would naturally understand" that a defendant may receive relief unless they have all three conditions listed in Section 3553(f)(1). If Congress intended for the three conditions to operate independently, Justice Gorsuch continued, Congress would have used "or" instead of "and," as it did in other provisions of the statute. In addition, Justice Gorsuch suggested that if there were reasonable doubt as to the meaning of Section 3553(f)(1), the rule of lenity—in which courts interpret ambiguous criminal statutes in favor of the defendant—would favor Pulsifer's preferred construction.

Justice Gorsuch further highlighted the practical effect of the Court's ruling. Reflecting the Commission's study, Justice Gorsuch indicated that "the government's preferred interpretation guarantees that thousands more people in the federal criminal justice system will be denied a chance . . . at an individualized sentence."

Congressional Considerations

In the First Step Act, Congress sought to expand safety-valve relief under Section 3553(f)(1) in order to afford such relief to certain drug offenders not disqualified on the basis of their criminal history. If the Court's interpretation of Section 3553(f)(1) does not align with congressional intent, Congress remains free to further amend Section 3553(f)(1). More broadly, Congress may directly amend underlying statutes establishing mandatory minimum sentences to the extent it seeks to increase, decrease, or eliminate those minimums (consistent with constitutional limitations). The Court's interpretation in *Pulsifer* of the language in 18 U.S.C. § 3553(f)(1) also sheds light on how the Court may view a similar set of qualifying or disqualifying conditions in other federal legislation going forward.

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