

No. 23-46

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

CASSITY DANIELLE JONES

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

REPLY BRIEF FOR THE PETITIONER

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Respondent acknowledges (Br. in Opp. 4) that the question presented in this case is “identical” to the question presented in *Pulsifer v. United States*, 143 S. Ct. 978 (2023) (No. 22-340) (argued Oct. 2, 2023). Respondent contends (Br. in Opp. 4-7), however, that recent amendments to Sentencing Guidelines § 4A1.1 adopted by the Sentencing Commission render it unnecessary to hold this case pending this Court’s decision in *Pulsifer*. In respondent’s view (Br. in Opp. 5-6), those amendments would make her eligible for safety-valve relief under 18 U.S.C. 3553(f)(1) even if the Court in *Pulsifer* agrees with the government’s interpretation of that statutory provision. Respondent’s arguments for denying the petition for a writ of certiorari before *Pulsifer* is decided are unsound.

Even if Congress does not disapprove or modify the Commission’s amendments before their default effec-

tive date of November 1, see 28 U.S.C. 994(p), they would have no bearing on a resentencing of respondent if the Court agrees with the government in *Pulsifer*. It is common ground between the parties that such a decision in *Pulsifer* would mean that her original sentencing proceedings misapplied Section 3553(f). And under 18 U.S.C. 3742(g), a resentencing on remand from an appellate finding of legal error is conducted pursuant to “the guidelines * * * that were in effect on the date of the previous sentencing of the defendant prior to the appeal.” 18 U.S.C. 3742(g)(1). Respondent acknowledges (Br. in Opp. 5) that under those guidelines, she “would be excluded from the safety valve under the government’s preferred interpretation” of Section 3553(f)(1). See Pet. App. 3a (“[Respondent] acknowledged that she had more than four criminal history points—failing subsection (A) of § 3553(f)(1).”).

Respondent observes (Br. in Opp. 6) that the Sentencing Commission has specified that its amendments to Section 4A1.1 would be retroactive. See 88 Fed. Reg. 60,534 (Sept. 1, 2023). But that does not change the fact that those amendments would not apply to any resentencing on remand from this Court on direct appeal. The mechanism for taking advantage of retroactive Guidelines amendments is instead through a postsentencing motion under 18 U.S.C. 3582(c)(2). See *Dillon v. United States*, 560 U.S. 817, 824-825 (2010). And it is far from clear that Section 3582(c)(2)—which allows sentence reductions only when “a term of imprisonment” is “based on a sentencing range that has subsequently been lowered by the Sentencing Commission,” 18 U.S.C. 3582(c)(2)—allows for a reduction when the sentencing court correctly applied a *statutory* minimum sentence.

At all events, this Court is “a court of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). If this Court in *Pulsifer* adopts the government’s interpretation of Section 3553(f)(1), the Court should allow the lower courts on remand to address the implications of the Commission’s amendments to Section 4A1.1 in the first instance.

* * * * *

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be held pending this Court’s decision in *Pulsifer v. United States, supra* (No. 22-340) and then disposed of as appropriate in light of that decision.

Respectfully submitted.

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