

No. 19-7685

IN THE SUPREME COURT OF THE UNITED STATES

DOMINIC LINDSEY, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES

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ADDITIONAL RELATED PROCEEDINGS

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

United States v. Lindsey, No. 17-cr-512 (May 14, 2018)

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

United States v. Lindsey, No. 18-10604 (Aug. 9, 2019)

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Petitioner contends (Pet. 9-15) that the Fifth Circuit erred in rejecting unpreserved arguments challenging his sentence on the ground that “[q]uestions of fact capable of resolution by the district court upon proper objection at sentencing can never constitute plain error.” Pet. App. 2a (quoting United States v. Lopez, 923 F.2d 47, 50 (5th Cir.) (per curiam), cert. denied, 500 U.S. 924 (1991)). In Davis v. United States, 140 S. Ct. 1060 (2020), this Court explained that “there is no legal basis for the Fifth Circuit’s practice of declining to review certain unpreserved factual arguments for plain error.” Id. at 1062. The appropriate course is accordingly to grant the petition for a writ

of certiorari, vacate the decision below, and remand the case for further proceedings in light of Davis. See ibid.; see also Bazan v. United States, No. 19-6113 (Mar. 23, 2020) (vacating and remanding Fifth Circuit decision in light of Davis); Bazan v. United States, No. 19-6431 (Mar. 23, 2020) (same).*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

APRIL 2020

* The government waives any further response to the petition unless this Court requests otherwise.