

No.

In the Supreme Court of the United States

OCTOBER TERM, 2025

JAMES DORELUS, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where a defendant pleads guilty to the crime of carrying a firearm during and in relation to a drug trafficking crime in violation of 18 USC § 924(c)(1)(A), is it a violate of the Fifth Amendment, Double Jeopardy Clause not to allow such a defendant the “safety valve” reduction for the underlying drug trafficking offense pursuant to USSG §5C1.2 and 18 USC § 3553(f) in cases where the same firearm resulted in the § 924(c)(1)(A) conviction?

PARTIES TO THE PROCEEDING

Petitioner, James Dorelus was the Defendant in the District Court for the Southern District of Florida (District Court), and the Appellant before the Eleventh Circuit Court of Appeals. The United States of America, was the Plaintiff in the District Court for the Southern District of Florida, and the Appellee before the Eleventh Circuit Court of Appeals.

CERTIFICATE OF COMPLIANCE

The Petitioner has complied with the requirements set forth in Rule 33 of the Supreme Court. In particular, Petitioner certifies that a 14-point Times Roman font was used in this petition, and pursuant to Supreme Court Rule the petition for certiorari contains 5895 words or less excluding, the questions presented, list of parties and corporate disclosure statement, the table of content, the table of cited authorities, the listing of counsel at the end of document, or any appendix.

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OPINIONS BELOW

The opinion of the Eleventh Circuit Court of Appeals was entered on 10th day of October, 2025, on Case No.: 25-10296-HH, copy of which is attached hereto as Appendix-C. The Petitioner did **not** filed a petition for rehearing or for rehearing *en banc*. The judgment of the Court of Appeals was issued on November 13, 2025, a copy of which is attached as Appendix-D.

JURISDICTION

The opinion of the Eleventh Circuit Court of Appeals was entered on October 10, 2025. [Appendix-1] This Court has jurisdiction to review this case under 28 USC § 1257(a) and Rule 10 (a) of the Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment of the United States Constitution, Double Jeopardy Clause. Also 18 USC § 924(c)(1)(A), 18 USC § 3553(f) and USSG § 5C1.2.

STATEMENT OF COURSE AND PROCEEDING

On May 8, 2024, a Criminal Complaint was filed against the Petitioner, James Dorelus. [DE:1] Also on May 8, 2024, Mr. Dorelus was arrested. On May 23, 2024, the Grand Jury returned an Indictment against the Petitioner, James Dorelus charging him in **Count-1**, that on September 28, 2023, Mr. Dorelus possessed with intent to distribute a controlled substance (a detectable amount of N-phenyl N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), in violation of 21 USC § 841(a)(1) and 21 USC § 841(b)(1)(C); In **Count-2**, that on October 20, 2023, Mr. Dorelus possessed with intent to distribute a controlled substance (a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), in violation of 21 USC § 841(a)(1) and 21 USC § 841(b)(1)(C); In **Count-3**, that on November 13, 2023, Mr. Dorelus possessed with intent to distribute a Controlled Substance (a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), in violation of 21 USC § 841(a)(1) and 21 USC § 841(b)(1)(C); In **Count-4**, that on January 12, 2024, Mr. Dorelus possessed with intent to distribute a controlled substance (a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) in violation of 21 USC § 841(a)(1) and 21 USC § 841(b)(1)(B) (vi); In **Count-5**, that on February 22, 2024, Mr. Dorelus possessed with intent to

distribute a controlled substance (a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), in violation of 21 USC § 841(a)(1) and 21 USC § 841(b)(1)(B)(vi); In **Count-6**, that on May 8, 2024, Mr. Dorelus possessed with intent to distribute a controlled substance (a detectable amount of N-phenyl-N-[1-(2- phenylethyl)-4-piperidinyl] propanamide), in violation of 21 USC § 841(a)(1) and 21 USC § 841(b)(1)(B)(vi); In **Count-7**, that on May 8, 2024, Mr. Dorelus knowingly carried a firearm during and in relation to a drug trafficking crime in violation of 18 USC § 924(c)(1)(A). The Indictment also contained a forfeiture Allegations. [DE:8]

On October 16, 2024, the Petitioner executed a Plea Agreement and a Factual Proffer [DE:19 & 20] and pled guilty to Counts 6 and 7 of the Indictment. [PT:20:11-19][DE:35:20:11-19] On December 19, 2025, the United States Probation Officer filed its Presentence Investigation Report (PSR) [DE:23] and on January 15, 2025, the Final Addendum to the PSR was filed. [DE:27] On January 9, 2025, the Petitioner filed his Objections to the Presentence PSR. [DE:25] On January 17, 2025, the Court overruled Mr. Dorelus' objections to the PSR. [DE: 36:18:1-3] On January 16, 2025, the Court sentenced Mr. Dorelus to a total of 120-months in prison, followed by 4 years supervised release, a \$200.00 special

assessment and entered a Judgment accordingly. [DE:29][DE:36:23:4-6]

[ST:23:4-6] On January 29, 2025, the Petitioner filed his Notice of Appeal. [DE:30]

The Petitioner is currently serving his 120 months prison sentence at Allenwood Medium FCI.

The opinion of the Eleventh Circuit Court of Appeals was entered on 10th day of October, 2025, on Case No.: 25-10296-HH, copy of which is attached hereto as Appendix-C. The Petitioner did **not** filed a petition for rehearing or for rehearing *en banc*. The judgment of the Court of Appeals was issued on November 13, 2025, a copy of which is attached as Appendix-D.

STATEMENT OF FACTS

According to the Criminal Complaint [DE:1] the facts are as follows: On September 28, 2023, October 20, 2023, November13, 2023, January12, 2024, February 22, 2024, and March 21, 2024 the FBI conducted controlled-buy operations utilizing the same FBI Confidential Human Source (CHS) in the vicinity of Northwest 5th Avenue, Fort Lauderdale, Florida 33311 (5th Avenue). These controlled buys all resulted in the seizure of controlled substances from the Petitioner, James Dorelus. The Drug Enforcement Administration (DEA) Laboratory (lab) was able to confirm that the controlled substance purchased by the

CHS on the above dates tested positive for detectable amounts of fluorofentanyl and fentanyl. [DE:1:2] On April 4, 2024, the CHS contacted Mr. Dorelus *via* cellphone in order to setup a multi-ounce purchase of fentanyl laced narcotics. The Petitioner responded to the CHS that “For 3 ounces 66— but I take off 200 for 4 ounces it’s 8800 but I can take off 200 for 5 ounces its 11thousand, When you let me know which one you want and when you give me a date you are coming ima cap it up for you and let you know. 3 ounces is 78 grams and 4 is 100 grams and and five is 128.” [DE:1:2]¹

The following day Mr. Dorelus sent a text to the CHS stating: “I did the math wrong but I got him with the 5 ounces.” [DE:1:3] On April 11, 2024, the CHS sent a text message to Mr. Dorelus asking if he could sell “fire” to them. According to the FBI agent, “fire” is the street name for firearm. Mr. Dorelus then asked the CHS “how much you tryna spend on fie,” and, “and 200 gone get ya’ll a lil small gun ya’ll gotta spend 300-450 for a nice one.” [DE:1:3] On April 29, 2024, Mr. Dorelus texted to the CHS a photograph of a tan and black pistol with an extended magazine. The Petitioner told the CHS that the cost of the pistol and five (5) ounces of a controlled substance containing fentanyl would be \$11,150.00.

¹ “Cap” was known to the FBI Special Agent on this case to be a capsule containing a controlled substance in powder form.

[DE:1:3] On May 6, 2024, Petitioner called the CHS and explained that he had 140 grams of a controlled substance containing fentanyl and confirmed the deal for May 8, 2024. [DE:1:3] On May 7, 2024, the CHS sent a text message to Petitioner confirming that the deal would take place in the bathroom of the Miami Grill located at 661 West Sunrise Boulevard, Fort Lauderdale, Florida, to which Mr. Dorelus confirmed “Yes”. This location was where the March 21, 2024, transaction had taken place at the request of Mr. Dorelus. [DE:1:3] On May 8, 2024, at approximately 12:05 p.m., the CHS was searched and found not to be in possession of any money, weapons, or contraband. The CHS was then given \$11,150.00 of FBI investigative funds to purchase the controlled substance containing fentanyl and a firearm from Petitioner. During this meeting with the agents, the CHS was wired with audio/video recording equipment. [DE:1:3] At approximately 12:14 p.m., Mr. Dorelus called the CHS to inquire as to where they were. Mr. Dorelus told the CHS that he was already at the Miami Grill. [DE:1:4] At approximately 12:55p.m., the CHS arrived at the Miami Grill and walked into the bathroom, where he met with Mr. Dorelus and conducted the hand-to-hand transaction. The CHS received approximately 100 grams of capsules containing brownish and off-white powder, a SCCY CPX -I 9mm pistol, and two magazines. Petitioner received

the \$11,150.00 of FBI investigative funds. [DE:1:4] At approximately 1:00 p.m., following the controlled buy, Mr. Dorelus walked out of the Miami Grill and was taken into custody. After Mr. Dorelus was arrested, he was searched and the agents found on him a pistol magazine, a digital scale, the \$11,150.00 FBI investigative funds, a cellular telephone, and seven (7) rounds of 9mm ammunition. [DE:1:4] Similarly, the CHS was also searched and the agents found on the CHS the drugs, a 9mm pistol, and two magazines. The drug evidence field tested positive for fentanyl. [DE:1:4]

REASON FOR GRANTING THE WRIT OF CERTIORARI

The issue presented in this case is of national significance and there is a need for the Supreme Court to provide uniform guidance, resolve constitutional conflicts, or otherwise address issues of "imperative public importance," rather than just correcting a factual error or misapplication of law. In the case at bar, Mr. Dorelus was punished twice for carrying the same firearm. First, the Petitioner was punished for carrying the firearm, when he pled guilty to Count-7 of the Indictment, which charged him with carrying a firearm during and in relation to a drug trafficking crime in violation of 18 USC § 924(c)(1)(A). For this crime Mr. Dorelus was sentence to a mandatory minimum sentence of five years (5) years to run consecutive to Count-6, which charged him with possession with the intent to

distribute fentanyl. Mr. Dorelus was eligible for a safety valve reduction as to Count-6 of the indictment, but the District Court denied Mr. Dorelus requests for a safety valve reduction because of the very same firearm that he carried on Count-7. Thus, the Petitioner was punished twice for the same firearm. Mr. Dorelus was punished when he was sentenced to Count-7 and then he was denied the safety valve reduction because of the same firearm that he was sentenced to five years in prison as to Count-7. Thus the question presented in this Petition for Certiorari is:

Where a defendant pleads guilty to the crime of carrying a firearm during and in relation to a drug trafficking crime in violation of 18 USC § 924(c)(1)(A), (which requires a mandatory minimum sentence of 5 years to run consecutive to the underlying drug trafficking offense), is it a violate of the Fifth Amendment, Double Jeopardy Clause not to allow such a defendant the “safety valve” reduction for the underlying drug trafficking offense pursuant to USSG §5C1.2 and 18 USC § 3553(f) in cases where the same firearm resulted in the § 924(c) (1)(A) conviction?

The Petitioner pled guilty to Count-6 of the Indictment, which charged that on May 8, 2024, Petitioner possessed with intent to distribute a controlled substance (a detectable amount of N-phenyl-N-[1-(2-phenyl-ethyl)-4-piperidinyl] propanamide), in violation of 21 USC § 841(a)(1) and 21 USC § 841(b)(1)(B) (vi); and to **Count-7**, which charges that on May 8, 2024, Petitioner knowingly carried a firearm during and in relation to a drug trafficking crime in violation of 18 USC § 924(c)(1)(A). [DE:8][DE:16] At first glance, both crimes that Petitioner pled guilty

to appear to be separate and distinct crimes, thus do not appearing to violate the Double Jeopardy Clause of the Fifth Amendment of the Constitution. However, Double Jeopardy comes to play in this case through the District Court's denial of the "Safety Valve" during the sentencing hearing. It should be noted that during the Plea Hearing, the Petitioner placed on the record that although not included in the Plea Agreement, the Government and Mr. Dorelus also agreed as follows:

MR. ENCINOSA: Your Honor, there's just one thing, that **we're free to argue at sentencing for the safety valve.**

THE COURT: Sure.

MR. ENCINOSA: Okay? So I just wanted to put that on the record, and **the government agrees with that.**

THE COURT: **Understood.** [emphasis added] [PT:16:5-10]

Although not written in the Plea Agreement, both the Government and the Petitioner agreed that Petitioner could argue at sentencing for the "Safety Valve".

[PT:16:5-10] Given the unique facts of this case, the Double Jeopardy Clause was violated when the District Court sentenced Petitioner as to Count-6 of the Indictment and refused to award Mr. Dorelus the "Safety Valve" pursuant to 18

USC § 3553(f) and USS.G.§ 5C1.2(a)(1)-(5).² [ST:18:1-3] The refusal to grant the “Safety Valve” was based on the same firearm that Petitioner was sentenced to 5 years in prison on Count-7 of the Indictment. This firearm was seized by the Government during the May 8, 2024 transaction that gave rise to Count-6 and Count-7. During the sentencing hearing, the Petitioner objected to Paragraphs 50, 53, 115 of the PSR and asserted that he met the criteria for the “Safety Valve”, under 18 USC§ 3553(f) and USS.G.§ 5C1.2(a)(1)-(5) as to Count-6 for Possession with Intent to Distribute a Controlled Substance. The Petitioner asserted that he qualified for the “Safety Valve” as to Count-6 of the Indictment and thus, he should have been sentenced without regards to the 5-year mandatory minimum sentence, and that the Court should have awarded to him the two level downward adjustment for “Safety Valve” pursuant to § 5C1.2 and 2D1.1(b)(18). The Petitioner has accepted responsibility for each of the offenses mentioned in the Indictment. The Petitioner has been willing to either orally or in writing provide testimony as to his actions in this case prior to sentencing. The Petitioner only had 1 point for his Criminal History Category, thus he was eligible for the “Safety Valve”. In addition, under the new Amendment, pursuant to the First Step Act, if a defendant meets all

² But for the firearm charged in Count-7 of the Indictment, Mr. Dorelus would have been able to qualify for the “Safety Valve” because he only had 1 Criminal History point. [DE:24:19]

the requirements of § 5C1.2(b) the Court may lower the 5 year mandatory minimum sentence to 24 months. This new Amended to 5C1.2 read as follows:

§5C1.2. Limitation on Applicability of Statutory Minimum Sentences in Certain Cases (a) Except as provided in subsection (b), in the case of an offense under 21 USC § 841, § 844, § 846, § 960, or § 963, or 46 USC § 70503 or § 70506, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds that the Petitioner meets the criteria in 18 USC § 3553(f)(1)– (5) as follows: (1) the Petitioner 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 Petitioner 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 Petitioner 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 21 USC § 848; and (5) not later than the time of the sentencing hearing, the Petitioner has truthfully provided to the Government all information and evidence the Petitioner 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 Petitioner 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 Petitioner has complied with this requirement.

(b) In the case of a Petitioner (1) who meets the criteria set forth in subsection (a); and (2) for whom the statutorily required minimum sentence is at least five years, the applicable guideline range shall not be less than 24 to 30 months of imprisonment. [Emphasis added] As to Count-6, Section (2) of § 5C1.2 (a)

states that in order to qualify for the “safety valve” a Petitioner must not have “... or **possess a firearm or other dangerous weapon** (or induce another participant to do so) in connection with the offense;” [Emphasis added] However, it is important to note that in the case at bar, Mr. Dorelus is not charged in the Indictment with “possess[ing] a firearm” but rather “carry[ing] a firearm”. [DE:8] The reason that the Petitioner is charged with “carrying a firearm” and not “possessing a firearm” is because the Government, through its CHS was the party that requested to buy a

firearm from the Petitioner. The Petitioner did not initiated any conversation with the CHS about the sale of a firearm. As noted in the Indictment, there were several drug transaction between the Petitioner and the CHS prior to May 8, 2024. At no time did the Petitioner asked the CHS if he wanted to buy a firearm. [DE:1:3 & 4]

In his Objections to the Presentence Investigation Report and Other Relief [DE:25], Mr. Dorelus preserved the Double Jeopardy argument and stated” In addition, if the Defendant is denied “safety valve” because of the firearm, he will in essence be punished twice for the same firearm. First, as to Count-7 the Defendant will receive a 5 year mandatory minimum sentence, which will run consecutive to Count-6. Second, the Defendant will be once again punished for the same firearm on Count-6, because the firearm makes the Defendant ineligible for the “safety valve”. This is clearly double counting and **double jeopardy** because the Defendant will clearly be punished for the same firearm twice. [Emphasis added][DE:25:5] At the end of the sentencing hearing, Mr. Dorelus preserved his Double Jeopardy objection and stated:

So, Mr. Encinosa Mr. Dorelus, now that the Court has issued its findings of fact and pronounced sentence, do either of you **object to the announcements?**

MR. ENCINOSA: Your Honor, on behalf of Mr. Dorelus, **I would object as I did in writing and also as I argued before the Court.**

THE COURT: **All right. And so that will preserve the objections that you made in docket entry 25, as well as what you argued here today regarding the offense level computation issues and the mandatory sentences.** [ST:23:24-25 & 24:8][Emphasis added]

By denying Petitioner the “Safety Valve” as to Count-6, for the same firearm that he was sentenced to on Count-7, the Court in essence punished Petitioner twice for the same firearm in violation of the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution. The Court sentenced Petitioner on Count-7 to a five (5) year mandatory minimum, consecutive, sentence for having “carried” the very same firearm (on May 8, 2024) that was used by the Court to deny to him the “Safety Valve” and to sentence Dorelus on Count-6 to a consecutive 5 year mandatory minimum sentence.[ST:17:20-25 & 18:1-3]

Jeopardy denotes risk. In the constitutional sense, jeopardy describes the risk that is traditionally associated with a criminal prosecution. See *Price v. Georgia*, 398 U. S. 323, 398 U. S. 326, 398 U. S. 329 (1970); *Serfass v. United States*, 420 U. S. 377, 420 U. S. 387-389 (1975). Although the constitutional language, "jeopardy of

life or limb," suggests proceedings in which only the most serious penalties can be imposed, the Clause has long been construed to mean something far broader than its literal language. See *Ex parte Lane*, 18 Wall. 163, 85 U. S. 170-173 (1874).

[Footnote 10] However, the courts have held that the risk to which the Clause refers is not present in proceedings that are not "essentially criminal." *Helvering v. Mitchell*, 303 U. S. 391, 303 U. S. 398 (1938). See *United States ex rel. Marcus v. Hess*, 317 U. S. 537 (1943); *One Lot Emerald Cut Stones v. United States*, 409 U. S. 232 (1972). See also J. Sigler, *Double Jeopardy* 60-62 (1969). The principles behind the Double Jeopardy Clause are deeply rooted in the Common Law. The principle finds expression in more than one form in the maxims of the common law. In civil cases the doctrine is expressed by the maxim that no man shall be twice vexed for one and the same cause (*Nemo debet bis vexari pro una et eadem causa*). In the criminal law the same principle, more directly applicable to the case before us, is expressed in the Latin, '*Nemo bis punitur pro eodem delicto*,' or, as Coke has it, '*Nemo debet bis puniri pro uno delicto*. No one can be twice punished for the same crime or misdemeanor. The common law not only prohibited a second punishment for the same offense, but it went further and forbid a second trial for the same offense, whether the accused had suffered punishment or not, and whether in the

former trial he had been acquitted or convicted. *Ex Parte Lange*, 85 US 163, 21 L.Ed. 872 (1873) The Fifth Amendment of the United States Constitution states: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; **nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb**; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. [Emphasis added] Typically, the courts have held that Double Jeopardy prohibits being tried twice for the same offense or being punished twice for same crime. In the case at bar, Mr. Dorelus was clearly punished twice for the same firearm that he sold to the CHS on May 8, 2024. Here we are faced with a very unique situation. On May 8, 2024, Petitioner sold a firearm to the Government's CHS, at the CHS' request. There were no other firearms involved throughout the several months of drugs transactions that took place between the CHS and Mr. Dorelus. After Mr. Dorelus was arrested on May 8, 2024, the Government charged him on Count-7 of the Indictment with with knowingly

carrying a firearm on May 8, 2024, during and in relation to a drug trafficking crime in violation of 18 USC § 924(c)(1)(A). Mr. Dorelus was also properly charged on Count-6 of the Indictment with Possession with Intent to Distribute a Controlled Substance (a detectable amount of N-phenyl-N-[1-(2-phenyl-ethyl)-4-piperidinyl] propanamide), on May 8, 2024, in violation of 21 USC § 841(a)(1) and 21 USC § 841(b)(1)(B)(vi). There is no Double Jeopardy issues concerning the different statutes that Petitioner pled guilty to on Counts-6 and Count-7. Double Jeopardy arises in this case, as a result of the Court's denying the Safety Valve, as to Count-6 of the Indictment, because of the very same firearm that the Court sentenced Mr. Dorelus to 5 years in prison on Count-7. Pursuant to USS.G. §5C1.2. (a) (2), a defendant does not qualified for the "Safety Valve" under section (a)(2) if the defendant "...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;" One of the leading cases dealing with "Double Jeopardy" is *Blockburger v. United States*, 284 US 299 (1932). *Blockburger*, the defendant had been charged in a five count indictment with violating the Harris Narcotic Act. The jury returned a verdict against Mr. *Blockburger* as to Counts 2, 3 and 5 of the Indictment. Each count was a separate

sale of morphine to the same purchaser. The Court sentenced *Blockburger* to 5 years in prison as to each count to run consecutive and a \$2000.00 fine. On appeal *Blockburger* argued that the sale of morphine in Counts-2 and Count-3 were actually one transaction because they were made to the same person. It appears from the evidence that, shortly after delivery of the drug which was the subject of the first sale, the purchaser paid for an additional quantity, which was delivered the next day. But the first sale had been consummated, and the payment for the additional drug, however closely following, was the initiation of a separate and distinct sale completed by its delivery. The contention on behalf of petitioner was that these two sales, having been made to the same purchaser and following each other, with no substantial interval of time between the delivery of the drug in the first transaction and the payment for the second quantity sold, constitute a single continuing offense. The court found that the Narcotic Act did not create the offense of engaging in the business of selling the forbidden drugs, but penalizes any sale made in the absence of either of the qualifying requirements set forth. Each of several successive sales constitutes a distinct offense, however closely they may follow each other. The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to

determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not. *Gavieres v. United States*, 220 U. S. 338 (1911). In that case, this court quoted from and adopted the language of the Supreme Court of Massachusetts in *Morey v. Commonwealth*, 108 Mass. 433 (1871): "A single act may be an offense against two statutes; and if **each statute requires proof of an additional fact which the other does not**, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other." [Emphasis added] Although the case is often cited for the standard that it set with regard to Double Jeopardy, the Fifth Amendment to the US Constitution is not mentioned anywhere in the text of the opinion itself. The *Blockburger* case was solely decided as a rule of Federal statutory interpretation. It was not until the US Supreme Court decided, *Brown v. Ohio*, 432 US 161 (1977), some 45 years later, that the court rule that the *Blockburger* test was a matter of constitutional law and thus applicable to the states when interpreting state statutes. The landmark case established the "same elements test" to determine if two offenses are the same for the purposes of double jeopardy. Under the *Blockburger* test, a defendant may be convicted of two offenses arising out of the same criminal incident if **each crime** contains an element that is not

found in the other. The *Blockburger* test is a legal test used in criminal law to determine whether a defendant can be punished separately for convictions on two charges or prosecuted later on a different charge after being convicted or acquitted on a charge involving the same incident. The test compares two charges to see if each contains at least one element that the other does not. This is done to ensure that a defendant is not punished twice for the same offense, which is prohibited by the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. In The case at bar, the Court should note that the only required proof that the District Court relied on in denying the Petitioner the “Safety Valve” was only the “firearm”, for which it sentenced Mr. Dorelus to a 5 years Mandatory minimum in Count-7 of the Indictment. Another case that is worth noting is that of *Brown v. Ohio*, 432 US 161 (1977). In *Brown*, the Supreme Court held that “[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not,” *Blockburger v. United States*, 284 U. S. 299, 284 U. S. 304. In line with that test, the Double Jeopardy Clause generally forbids successive prosecution and cumulative punishment for a greater and lesser included offense. Pp. 432 US

166-169. Here, though the Ohio Court of Appeals properly held that, under state law, joyriding (taking or operating a vehicle without the owner's consent) and auto theft (joyriding with the intent permanently to deprive the owner of possession) constitute "the same statutory offense" within the meaning of the Double Jeopardy Clause, it erroneously concluded that petitioner could be convicted of both crimes because the charges against him had focused on different parts of the 9-day interval between petitioner's taking of the car and his apprehension. There was still only one offense under Ohio law, and the specification of different dates in the two charges against petitioner cannot alter the fact that he was twice placed in jeopardy for the same offense in violation of the Fifth and Fourteenth Amendments. Pp. 432 US 169-170. In the case at bar the argument for a Double Jeopardy violation is even more compelling than in *Brown*, because the the firearm charged in Count-7 and the firearm, which resulted in the denial of Petitioner's "Safety Valve" as to Count-6, is the same firearm which was seized on May 8, 2024. Thus where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not? In this case each provision require proof of the same firearm seized on May 8, 2024. The

only difference being that in the case at bar, the same firearm was used in Count-7 to sentence Petitioner to a 5 year mandatory minimum prison sentence, and as to Count-6, the same firearm was used to deny Petitioner the “Safety Valve”, thus punishing Mr. Dorelus once again to another 5 years mandatory minimum sentence for the same firearm. Accordingly, Petitioner’s Fifth Amendment Rights were violated when the Court denied Petitioner’s request for the “Safety Valve” as to Count-6 of the Indictment, thus resulting in Mr. Dorelus being punished twice for the same firearm.

CONCLUSION

Based upon the foregoing arguments and citations of authority, this Court should vacate the judgment of the Eleventh Circuit Court of Appeals denying Petitioner’s appeal (Appendix C) and remand this case back to the District Court with instruction to resentence the Petitioner and apply the safety valve reduction as to Count-6 of the Indictment.

Respectfully submitted,

By: Israel Jose Encinosa
Israel J. Encinosa, Esq.

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-cr-60099-Singhal/Strauss

21 U.S.C. § 841(a)(1)

18 U.S.C. § 924(c)(1)(A)

21 U.S.C. § 853

18 U.S.C. § 924(d)(1)

FILED BY SM D.C.

May 23, 2024

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - FTL

UNITED STATES OF AMERICA

vs.

JAMES DORELUS,

Defendant.

INDICTMENT

The Grand Jury charges that:

COUNT 1

**Possession with Intent to Distribute a Controlled Substance
(21 U.S.C. § 841(a)(1))**

On or about September 28, 2023, in Broward County, in the Southern District of Florida,
the defendant,

JAMES DORELUS,

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of an analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

COUNT 2

**Possession with Intent to Distribute a Controlled Substance
(21 U.S.C. § 841(a)(1))**

On or about October 20, 2023, in Broward County, in the Southern District of Florida, the defendant,

JAMES DORELUS,

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of an analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

COUNT 3

**Possession with Intent to Distribute a Controlled Substance
(21 U.S.C. § 841(a)(1))**

On or about November 13, 2023, in Broward County, in the Southern District of Florida, the defendant,

JAMES DORELUS,

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(B)(vi), it is further alleged that this violation involved ten (10) grams or more of a mixture and substance containing a detectable amount of an analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

Pursuant to Title 21, United States Code, Section 841(b)(1)(C), it is further alleged that this violation involved a mixture and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

COUNT 4
Possession with Intent to Distribute a Controlled Substance
(21 U.S.C. § 841(a)(1))

On or about January 12, 2024, in Broward County, in the Southern District of Florida, the defendant,

JAMES DORELUS,

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(B)(vi), it is further alleged that this violation involved forty (40) grams or more of a mixture and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

Pursuant to Title 21, United States Code, Section 841(b)(1)(B)(vi), it is further alleged that this violation involved ten (10) grams or more of a mixture and substance containing a detectable amount of an analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

COUNT 5

**Possession with Intent to Distribute a Controlled Substance
(21 U.S.C. § 841(a)(1))**

On or about February 22, 2024, in Broward County, in the Southern District of Florida, the defendant,

JAMES DORELUS,

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(B)(vi), it is further alleged that this violation involved forty (40) grams or more of a mixture and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

Pursuant to Title 21, United States Code, Section 841(b)(1)(B)(vi), it is further alleged that this violation involved ten (10) grams or more of a mixture and substance containing a detectable amount of an analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

COUNT 6

**Possession with Intent to Distribute a Controlled Substance
(21 U.S.C. § 841(a)(1))**

On or about May 8, 2024, in Broward County, in the Southern District of Florida, the defendant,

JAMES DORELUS,

did knowingly and intentionally possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Pursuant to Title 21, United States Code, Section 841(b)(1)(B)(vi), it is further alleged that this violation involved forty (40) grams or more of a mixture and substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

Pursuant to Title 21, United States Code, Section 841(b)(1)(B)(vi), it is further alleged that this violation involved ten (10) grams or more of a mixture and substance containing a detectable amount of an analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.

COUNT 7
Possession of a Firearm in Furtherance of a Drug Trafficking Crime
(18 U.S.C. § 924(c)(1)(A))

On or about May 8, 2024, in Broward County, in the Southern District of Florida, the defendant,

JAMES DORELUS,

did knowingly carry a firearm during and in relation to a drug trafficking crime, an offense for which the defendant may be prosecuted in a court of the United States, that is, a violation of Title 21, United States Code, Section 841(a)(1), as charged in Count 6 of this Indictment, in violation of Title 18, United States Code, Section 924(c)(1)(A).

FORFEITURE ALLEGATIONS

1. The allegations of this Indictment are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging criminal forfeiture to the United States of America of certain property in which the defendant, **JAMES DORELUS**, has an interest.

2. Upon conviction of a violation of Title 21, United States Code, Section 841, as alleged in this Indictment, the defendant, **JAMES DORELUS**, shall forfeit to the United States any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such offense, and any property that was used or intended to be used, in any manner or part, to

commit or facilitate the commission of such offense, pursuant to Title 21, United States Code, Section 853.

3. Upon conviction of a violation of Title 18, United States Code, Section 924(c), or any other criminal law of the United States, as alleged this Indictment, the defendant shall forfeit to the United States any firearm and ammunition involved in or used in the commission of such offense, pursuant Title 18, United States Code, Section 924(d)(1).

4. The property subject to forfeiture as a result of the alleged offenses includes, but is not limited to, the following:

- a) One (1) SCCY pistol, model CPX-1, 9mm caliber;
- b) Approximately six (6) rounds of Ammo Incorporated 9mm ammunition; and
- c) Approximately one (1) round of Sig Sauer 9mm ammunition.

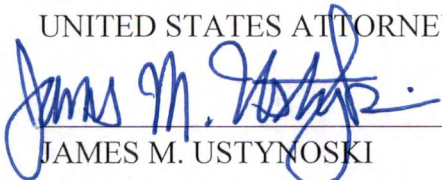
All pursuant to Title 21, United States Code, Section 853 and Title 18, United States Code, Section 924(d)(1), and the procedures set forth at Title 21, United States Code, Section 853, as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL

FOREPERSON

FOR  BRUCE O. BROWN

MARKENZY LAPOINTE
UNITED STATES ATTORNEY


JAMES M. USTYNOSKI
ASSISTANT UNITED STATES ATTORNEY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA

CASE NO.: 24-cr-60099-Singhal/Strauss

v.

JAMES DORELUS,

Defendant.**Court Division** (select one)

- ☐ Miami ☐ Key West ☐ FTP
☒ FTL ☐ WPB

CERTIFICATE OF TRIAL ATTORNEY**Superseding Case Information:**

New Defendant(s) (Yes or No) _____

Number of New Defendants _____

Total number of counts _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. §3161.
3. Interpreter: (Yes or No) No
List language and/or dialect: _____
4. This case will take 3 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I <input checked="" type="checkbox"/> 0 to 5 days	<input type="checkbox"/> Petty
II <input type="checkbox"/> 6 to 10 days	<input type="checkbox"/> Minor
III <input type="checkbox"/> 11 to 20 days	<input type="checkbox"/> Misdemeanor
IV <input type="checkbox"/> 21 to 60 days	<input checked="" type="checkbox"/> Felony
V <input type="checkbox"/> 61 days and over	
6. Has this case been previously filed in this District Court? (Yes or No) No
If yes, Judge _____ Case No. _____
7. Has a complaint been filed in this matter? (Yes or No) Yes
If yes, Magistrate Case No. 24-mj-06221-PMH
8. Does this case relate to a previously filed matter in this District Court? (Yes or No) No
If yes, Judge _____ Case No. _____
9. Defendant(s) in federal custody as of 05/08/2024
10. Defendant(s) in state custody as of _____
11. Rule 20 from the _____ District of _____
12. Is this a potential death penalty case? (Yes or No) No
13. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard? (Yes or No) No
14. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss? (Yes or No) No
15. Did this matter involve the participation of or consultation with now Magistrate Judge Eduardo I. Sanchez during his tenure at the U.S. Attorney's Office, which concluded on January 22, 2023? No

By: _____

JAMES M. USTYNOSKI

Assistant United States Attorney

Court ID No. A5502615

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: JAMES DORELUS

Case No: _____

Counts 1-2:

Possession with Intent to Distribute a Controlled Substance

Title 21, United States Code, Section 841(a)(1) and (b)(1)(C)

*** Max. Term of Imprisonment: 20 years'**

*** Mandatory Min. Term of Imprisonment (if applicable): n/a**

*** Max. Supervised Release: 3 years'**

*** Max. Fine: \$1,000,000.00**

Counts 3-6:

Possession with Intent to Distribute a Controlled Substance

Title 21, United States Code, Section 841(a)(1) and (b)(1)(B)(vi)

*** Max. Term of Imprisonment: 40 years'**

*** Mandatory Min. Term of Imprisonment (if applicable): 5 years'**

*** Max. Supervised Release: 4 years' up to Life**

*** Max. Fine: \$5,000,000.00**

Count: 7

Possession of a Firearm in Furtherance of a Drug Trafficking Crime

Title 18, United States Code, Sections 924(c)(1)(A)

*** Max. Term of Imprisonment: Life**

*** Mandatory Min. Term of Imprisonment (if applicable): Consecutive 5 Years'
Imprisonment**

*** Max. Supervised Release: 5 Years'**

*** Max. Fine: \$250,000.00**

Count:

*** Max. Term of Imprisonment:**

*** Mandatory Min. Term of Imprisonment (if applicable):**

*** Max. Supervised Release: * Max. Fine:**

***Refers only to possible term of incarceration, supervised release and fines. It does not include restitution, special assessments, parole terms, or forfeitures that may be applicable.**

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

JAMES DORELUS

Case Number: 0:24-CR-60099-AHS(1)

USM Number: 14010-511

Counsel for Defendant: Israel Jose Encinosa

Counsel for United States: James Ustynoski

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	6 and 7 of the Indictment
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 841(a)(1) Possession with intent to distribute 40 grams or more of fentanyl and 10 grams or more of fentanyl analog	05/08/2024	6
18 U.S.C. § 924(c)(1)(A)(i) Possession of a firearm in furtherance of a drug trafficking crime	05/08/2024	7

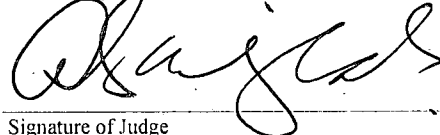
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☒ All remaining Count(s) ☐ is ☒ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

January 16, 2025

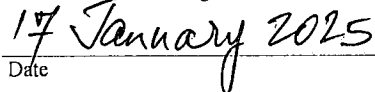
Date of Imposition of Judgment



Signature of Judge

RAAG SINGHAL**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge



Date

DEFENDANT: JAMES DORELUS
CASE NUMBER: 0:24-CR-60099-AHS(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

60 Months as to Count 6.

60 Months as to Count 7 to run Consecutive to Count 6.

Credit Time Served from 5-8-2024.

Total Sentence 120 Months

That as to the defendant's criminal history as noted in paragraph 70. The Court notes that the defendant was 14 years of age and recommends that Bureau of Prisons not affect his placement as a result of that case.

☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant be designated to a facility in the Southern District of Florida or as close to Broward County and Participation in the RDAP program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAMES DORELUS
CASE NUMBER: 0:24-CR-60099-AHS(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Four (4) Years as to Count 6.**
Five (5) Years as to Count 7. Terms to run Concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: JAMES DORELUS
CASE NUMBER: 0:24-CR-60099-AHS(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JAMES DORELUS
CASE NUMBER: 0:24-CR-60099-AHS(1)

SPECIAL CONDITIONS OF SUPERVISION

Cooperating with Immigration during Removal Proceedings: The defendant shall cooperate in any removal proceedings initiated or pending by the U.S. Immigration and Customs Enforcement consistent with the Immigration and Nationality Act. If removed, the defendant shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release shall be non-reporting while the defendant is residing outside the United States. If the defendant reenters the United States within the term of probation, the defendant is to report to the nearest U.S. Probation Office within 72 hours of the defendant's arrival.

Permissible Search: The defendant shall submit to a search of his person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: JAMES DORELUS
CASE NUMBER: 0:24-CR-60099-AHS(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200.00	\$0.00	\$0.00		

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

DEFENDANT: JAMES DORELUS
CASE NUMBER: 0:24-CR-60099-AHS(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payments of \$200.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 6 and 7, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within seven days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX C

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10296
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES DORELUS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:24-cr-60099-AHS-1

Before BRANCH, ANDERSON, and HULL, Circuit Judges.

PER CURIAM:

After a guilty plea, James Dorelus appeals his 120-month sentence, which consists of a 60-month, mandatory-minimum

sentence on his drug distribution conviction in Count 6 and a mandatory, consecutive 60-month sentence on his possession of a firearm conviction in Count 7. In imposing the sentence on the drug crime in Count 6, the district court denied Dorelus safety valve relief—eligibility for a sentence lower than the mandatory minimum—because his firearm possession made him ineligible for such relief under U.S.S.G. § 5C1.2(a)(1)-(5) and 18 U.S.C. § 3553(f)(1)-(5).

On appeal, Dorelus argues the district court’s denial of safety valve relief as to his Count 6 sentence punished him twice for the same firearm underlying Count 7 in violation of the Double Jeopardy Clause of the Fifth Amendment. After careful review, we affirm Dorelus’s sentence because there is no double jeopardy violation.

I. FACTUAL BACKGROUND

The Federal Bureau of Investigations (“FBI”) conducted seven controlled-buy operations involving Defendant James Dorelus between September 2023 and May 2024. Six of these controlled buys are the bases for the charges in this case. Each time, the FBI’s confidential human source (“CHS”) purchased controlled substances from Dorelus. The purchased substances later tested positive for detectable amounts of fentanyl and flourofentanyl.

The first five controlled buys followed a similar pattern. Before each transaction, FBI agents met the CHS and verified the CHS had no money or contraband on their person. FBI Agents then supplied the CHS with FBI investigative funds. Each time, the CHS

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met Dorelus either in the vicinity of the VIP Liquors package store or in the Miami Grill restaurant, both located in Fort Lauderdale, Florida. The CHS, always wearing audio and video recording equipment, used the FBI investigative funds to purchase pills or bags containing a brownish or off-white powder in hand-to-hand transactions with Dorelus. Following the purchases, the FBI recovered the purchased contraband from the CHS. Items recovered from each of the first five sales tested positive for: 5.36 grams of fentanyl and fluorofentanyl, 5.8 grams of fentanyl and fluorofentanyl, 25.8 grams of fluorofentanyl, 52 grams of fentanyl and fluorofentanyl, and 57.59 grams of fentanyl and fluorofentanyl.

The sixth and final controlled buy slightly deviated from the pattern set by the first five controlled buys. Before this transaction, the CHS asked Dorelus if he would sell “fire.” “Fire” is a shorthand term for firearm. Dorelus responded that \$200 would get a “lil small gun,” while \$300 to \$450 would get a “nice one.” Eventually, Dorelus sent the CHS a picture of a tan and black pistol and said the cost of the pistol and five ounces of fentanyl would be \$11,150.

The CHS and Dorelus met at the Miami Grill, where the CHS gave Dorelus \$11,150 of FBI investigative funds in exchange for 100 grams of pills, a 9mm pistol, and two magazines for the pistol. Dorelus exited the restaurant and was taken into custody by FBI Miami Special Weapons and Tactics (“SWAT”) members. FBI agents recovered \$11,150, 9mm ammunition, and a cell phone from Dorelus. The serial numbers on the recovered cash matched serial numbers of FBI investigative funds provided to the CHS. FBI

agents also recovered the 9mm pistol and drugs from the CHS, and the drugs tested positive for 78.99 grams of fentanyl and fluorofentanyl.

Across the six above transactions between Dorelus and the CHS, and a seventh March 21, 2024 purchase that yielded 12.6 grams of fentanyl, Dorelus was held responsible for 212.34 grams of fentanyl and 25.8 grams of fentanyl analog.¹

II. PROCEDURAL HISTORY

A. Indictment and Guilty Plea

In May 2024, a grand jury in the Southern District of Florida returned an indictment charging Dorelus with six counts of possession with intent to distribute a controlled substance in violation of 21 U.S.C. § 841(a)(1), and one count of possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). The first six counts each corresponded to one of the controlled buys and charged Dorelus with possessing varying amounts of fentanyl or fentanyl analogue with the intent to distribute. Count 7 charged that Dorelus “did knowingly carry a firearm during and in relation to a drug trafficking crime”² The indictment also included forfeiture allegations relating to the 9mm

¹ Initially, Dorelus objected to being held responsible for fentanyl recovered after the unindicted March 21, 2024 sale. He withdrew that objection at the sentencing hearing.

² For purposes of 18 U.S.C. § 924(c)(1)(A), a “drug trafficking crime” is defined, in part, by § 924(c)(2) as “any felony punishable under the Controlled Substances Act (21 U.S.C. § 801 *et seq.*)” 18 U.S.C. § 924(c)(2).

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pistol, ammunition, and other property related to the charged offenses.

In October 2024, pursuant to a plea agreement, Dorelus pled guilty to Count 6 and Count 7 of the indictment. The government dismissed the five other counts of the indictment. The plea agreement stated that the statutory term of imprisonment for Count 6 ranged from a mandatory minimum of five years up to forty years. Similarly, for Count 7, the agreement stated that the district court must impose a mandatory-minimum term of imprisonment of five years consecutive to any other sentence and may impose a maximum term of imprisonment up to life.

At the change of plea hearing, Dorelus's counsel informed the district court that Dorelus and the government agreed that Dorelus could still argue for a safety valve sentence below the mandatory minimum. Dorelus and the government also agreed to a factual proffer statement, wherein Dorelus stipulated that the facts were sufficient to prove the crimes charged under 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 924(c)(1)(A).

B. Presentence Investigation Report

A probation officer prepared a presentence investigation report ("PSI") using the 2024 Sentencing Guidelines manual. As to Count 6, the PSI calculated a total offense level of 25, consisting of: (1) a base offense level of 28 based on a total of 212.34 grams of fentanyl and 25.8 grams of fentanyl analog, which yielded a converted drug weight of 788.85 kilograms, pursuant to U.S.S.G. § 2D1.1(c)(6); (2) a two-level decrease for acceptance of

responsibility, pursuant to U.S.S.G. § 3E1.1(a); and (3) an additional one-level decrease for Dorelus timely notifying the government of his intent to plea guilty, pursuant to U.S.S.G. § 3E1.1(b). With a total offense level of 25 and a criminal history category of I, the PSI calculated Dorelus's advisory guideline imprisonment range on Count 6 to be 57 to 71 months. However, because this range was below 21 U.S.C. § 841(b)(1)(B)'s mandatory minimum of five years, the PSI adjusted the guideline range to 60 to 71 months. U.S.S.G. § 5G1.2 cmt. n.3.

In calculating the offense level for the 21 U.S.C. § 841(a)(1) drug distribution conviction in Count 6, the PSI explained that it did not apply a two-level increase under U.S.S.G. § 2D1.1(b)(1) for Dorelus having a firearm during that drug crime. Rather, the PSI noted that (1) Dorelus was convicted in Count 7 under 18 U.S.C. § 924(c) for possession of a firearm in furtherance of that § 841(a)(1) drug crime; and (2) Application Note 4 to U.S.S.G. § 2K2.4 provides that, if a § 924(c) firearm sentence is imposed in conjunction with a sentence for the underlying offense (here, the drug crime), the specific offense characteristic for possession of a firearm during that underlying offense is not applied to the sentence for that underlying offense. Because Dorelus was being sentenced in Count 7 for his § 924(c) firearm offense, the PSI thus did not recommend or apply a two-level increase for the firearm in calculating the offense level for his drug crime in Count 6.

The PSI, however, did recommend that Dorelus's firearm possession in connection with his § 841(a)(1) drug distribution

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crime meant Dorelus did not meet the requirements of U.S.S.G. § 5C1.2(a)(1)-(5) for safety valve relief, a two-level reduction in his offense level, and a sentence without regard to the statutory mandatory-minimum sentence of five years for his § 841(a)(1) drug crime.

For Dorelus's firearm conviction in Count 7, 18 U.S.C. § 924(c)(1) required, at minimum, a 60-month term of imprisonment to run consecutively to any other term of imprisonment. The PSI applied U.S.S.G. § 2K2.4(b)'s requirement that "the guideline sentence is the minimum term of imprisonment required by statute." Thus, the PSI stated that a 60-month, consecutive sentence was required on Count 7.

Among other objections, Dorelus objected to the PSI's finding that he was not eligible for safety valve relief and thus could not be sentenced without regard to the statutory mandatory minimum for Count 6.³ Dorelus acknowledged that safety valve relief did not apply to defendants who had "possess[ed] a firearm or other dangerous weapon" 18 U.S.C. § 3553(f)(2); U.S.S.G. § 5C1.2(a)(2). Nonetheless, he argued the limitation did not bar him from safety valve relief. First, Dorelus noted the indictment charged him with "carrying" rather than possessing a firearm,

³ Dorelus's other objections related to (1) the PSI's inclusion of information regarding his no contest plea and sentence for a sex-related offense while Dorelus was a juvenile; (2) inclusion of drug quantities from transactions not charged in the indictment; and (3) Dorelus's inability to pay applicable fines. Dorelus does not raise any issues on appeal relating to these objections.

which reflected that the government's CHS initiated the sale of the firearm.

Second, Dorelus argued imposing a sentence on Count 7 and denying safety valve relief on Count 6 based on possession of the same firearm was "clearly double counting and double jeopardy because the Defendant will clearly be punished for the same firearm twice." Dorelus emphasized that the Guidelines did not allow for a firearm to be double counted (1) as the basis for his Count 7 firearm conviction for possession of a firearm; and (2) as an enhancement in his underlying drug sentence. U.S.S.G. § 2K2.4 Note 4. Thus, Dorelus contended a similar double counting should not be used to deny him eligibility for safety valve relief in his Count 6 sentence.

C. Sentencing Hearing and Appeal

At Dorelus's January 2025 sentencing hearing, the district court considered what it called Dorelus's "double counting or . . . double-jeopardy-type argument." The district court indicated it did not agree with Dorelus's position. Dorelus's counsel tried to clarify, "it's a guideline argument that I'm trying to make a challenge to here" Ultimately, the district court overruled the objection and sentenced Dorelus to 60 months imprisonment on his drug distribution conviction in Count 6 and a consecutive 60 months imprisonment on his firearm conviction in Count 7.

Dorelus timely appealed.

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III. STANDARD OF REVIEW

This Court reviews *de novo* an alleged double jeopardy claim. *United States v. Al Jaberi*, 97 F.4th 1310, 1322 (11th Cir. 2024).

We reject the government’s argument that Dorelus failed to raise sufficiently his double jeopardy claim, and we decline to apply plain error review. Both in his objections to the PSI and at the sentencing hearing, Dorelus asserted that the district court finding him ineligible for safety valve relief as to his Count 6 sentence based on the same firearm underlying Count 7 would be “double jeopardy.” That Dorelus’s counsel referred to the objection as a guideline argument did not negate, but explained the basis for, his double jeopardy claim. Indeed, what Dorelus’s counsel adequately conveyed was that denial of safety valve relief under the guidelines improperly placed Dorelus in double jeopardy for the same firearm possession.

IV. DISCUSSION

On appeal, Dorelus argues that using his possession of one firearm to both support his firearm conviction on Count 7 and render him ineligible for safety valve relief on Count 6 punishes him twice and thus violates the Double Jeopardy Clause of the Fifth Amendment. We disagree and explicate why.

A. Fifth Amendment Double Jeopardy

The Double Jeopardy Clause of the Fifth Amendment provides that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. “This

guarantees against a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense.” *United States v. Bobb*, 577 F.3d 1366, 1371 (11th Cir. 2009). Consideration of offender-specific information or prior criminal conduct at sentencing, however, does not result in “punishment” that offends the Double Jeopardy Clause. *Witte v. United States*, 515 U.S. 389, 400-01 (1995); *United States v. Carey*, 943 F.2d 44, 46 n.4 (11th Cir. 1991).

For example, in *Witte*, the defendant’s offense level for his marijuana distribution conviction was increased due to quantities of cocaine distributed in contemporaneous transactions. *Witte*, 515 U.S. at 393-94, 399. A subsequent indictment charged him with conspiracy to import that cocaine. *Id.* at 394. The defendant moved to dismiss on double jeopardy grounds because that same cocaine was already used to increase his sentence on his marijuana conviction. *Id.* at 394-95. The Supreme Court found no double jeopardy violation because “consideration of information about the defendant’s character and conduct at sentencing does not result in ‘punishment’ for any offense other than the one of which the defendant was convicted.” *Id.* at 401.

Similarly, this Court held in *Carey* that an increase in the defendant’s offense level for failure to appear at his sentencing hearing did not constitute a punishment that would cause the Double Jeopardy Clause to bar a subsequent prosecution for willfully failing to appear for sentencing in violation of

18 U.S.C. § 3146. *Carey*, 943 F.2d at 45-47. We noted that enhancement of a sentence based on other criminal conduct had the “practical effect of penalizing the defendant[,]” but “it is not considered ‘punishment’ for that conduct in the double jeopardy context because the court is sentencing the defendant only for the instant offense, which is considered more serious because of the defendant’s other criminal conduct.” *Id.* at 46 n.4.

B. Safety Valve Relief

Turning to this case, we conclude that consideration of Dorelus’s firearm possession to find him ineligible for a sentence reduction—safety valve relief—on his drug distribution conviction in Count 6 did not create a double jeopardy violation. *See Witte*, 515 U.S. at 400-01; *Carey*, 943 F.2d at 46 n.4.

As background, safety valve relief under 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2 “allows for sentencing without regard to any statutory minimum, with respect to certain offenses, when specific requirements are met.” *United States v. Brehm*, 442 F.3d 1291, 1299 (11th Cir. 2006). A defendant who qualifies for safety valve relief also receives a two-level downward adjustment to his offense level. U.S.S.G. § 2D1.1(b)(18). The defendant bears the burden of satisfying the five requirements for safety valve relief by a preponderance of the evidence. *United States v. Thomas*, 32 F.4th 1073, 1078 (11th Cir. 2022) (citing *United States v. Carillo-Ayala*, 713 F.3d 82, 90 (11th Cir. 2013)).

Safety valve relief is available for charges under 21 U.S.C. § 841(a)(1), including Dorelus’s charge for possession of a

controlled substance with intent to distribute in Count 6. 18 U.S.C. § 3553(f). But as the government stresses, one of the five requirements necessary to qualify for that safety valve relief is that “the defendant did not . . . possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense” 18 U.S.C. § 3553(f)(2); U.S.S.G. § 5C1.2(a)(2). Indisputably, Dorelus’s firearm possession made him ineligible for safety valve relief on Count 6. So, the only question is whether that ineligibility for safety valve relief is a double jeopardy violation given that Dorelus was also sentenced for his firearm conviction in Count 7. The answer is no.

That Dorelus’s sentence was not reduced on Count 6 because of his firearm possession does not punish him for another offense other than the one drug crime in Count 6. Even though the district court sentenced Dorelus for his § 924(c) firearm conviction in Count 7, the district court, as in *Carey*, was free to consider that criminal conduct (e.g., the same firearm possession) in sentencing Dorelus for his drug crime without running afoul the Double Jeopardy Clause. Dorelus attempts to distinguish *Carey* because it did not involve the denial of safety valve relief. Dorelus does not explain the significance of the distinction, and we find none. The upshot of a sentence enhancement or a denial of safety valve relief is really the same for our purposes here: a criminal defendant’s sentence or sentencing range is longer than desired. But it does not punish Dorelus twice for the same statutory crime.

In his briefs, Dorelus cites to no authority for his proposition that a court's denial of a sentence reduction under the guidelines amounts to punishment in the double jeopardy context. We recognize that Dorelus does cite to *Brown v. Ohio*, but that case involved the same act or transaction that violated two distinct statutory provisions. *Brown v. Ohio*, 432 U.S. 161, 166, 169 (1977) (quoting *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). In such circumstances, the Double Jeopardy Clause prohibits multiple punishments "[u]nless each statute requires proof of an additional fact which the other does not" *Brown*, 432 U.S. at 166 (quotations omitted). Here, Dorelus's firearm possession charge supports a charge that he violated 18 U.S.C. § 924(c)(1)(A), but his firearm possession has not been used to charge Dorelus with violating any other criminal statute. To the extent the district court held Dorelus "violated" the preconditions for safety valve relief, we have already determined consideration of Dorelus's firearm possession for sentencing on his § 841(a)(1) drug conviction was not "punishment" for double jeopardy purposes.

Finally, we note Dorelus's suggestion that he pled guilty to "carrying" a firearm, meaning he did not "possess" a firearm such that he is ineligible for safety valve relief under U.S.S.G. § 5C1.2(a). In the factual proffer statement entered alongside his guilty plea, however, Dorelus concedes the government would have proven that, on May 8, 2024, he "possessed a SCCY CPX-1 9mm pistol" The district court properly found Dorelus was ineligible for safety valve relief based on his possession of a firearm

and that decision also did not violate the Double Jeopardy Clause of the Fifth Amendment.

V. CONCLUSION

For the foregoing reasons, we **AFFIRM** Dorelus's 120-month total sentence on Counts 6 and 7.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 10, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 25-10296-HH
Case Style: USA v. James Dorelus
District Court Docket No: 0:24-cr-60099-AHS-1

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing. Among other things, **a petition for rehearing must include a Certificate of Interested Persons.** See 11th Cir. R. 40-3.

Costs

No costs are taxed.

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

APPENDIX D

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10296

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES DORELUS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:24-cr-60099-AHS-1

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: October 10, 2025

For the Court: DAVID J. SMITH, Clerk of Court