

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2025

AARON DAVIS REED,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

MOTION FOR LEAVE TO FILE *IN FORMA PAUPERIS*

The Petitioner, Aaron Davis Reed, requests leave, pursuant to Rule 39.1 of the Supreme Court Rules, to file the attached Petition for a Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously sought and been granted leave to proceed *in forma pauperis* in the following court: The United States District Court for the Western District of Texas.

Undersigned counsel was admitted to practice before the U.S. Supreme Court June 23rd, 2014. Additionally, undersigned counsel has been appointed under the Criminal Justice Act of 1964, 18 USC § 3006A.

Respectfully submitted,

/s/ John A. Kuchera

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AARON DAVIS REED,
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UNITED STATES OF AMERICA,
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Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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Question Presented

1. When a defendant's offense of conviction is escape from custody, does adding an escape status point under U.S.S.G. § 4A1.1(e) – based on that same escape – violate the defendant's right not to be subjected to multiple punishments under the Fifth Amendment Double Jeopardy Clause.

List of Parties

Aaron Davis Reed

Petitioner
(Defendant/Appellant below)

United States of America

Respondent

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PETITION FOR WRIT OF CERTIORARI

Petitioner Aaron Davis Reed respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Citation to Opinion Below

The opinion of the United States Court of Appeals for the Fifth Circuit affirming Reed's sentence is styled: *United States v. Reed*, No. 26-50066, 2026 U.S. App. LEXIS 24646 (5th Cir. Aug. 14, 2026).

Jurisdiction

The opinion of the United States Court of Appeals for the Fifth Circuit affirming Reed's sentence was announced on August 14, 2026 and is attached hereto as Appendix A. Pursuant to Supreme Court Rule 13.3, this Petition has been filed within 90 days of the date of the entry of judgment. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

Sentencing Guidelines

U.S.S.G. § 4A1.1(e):

Add 1 point if the defendant (1) receives 7 or more points under subsections (a) through (d), and (2) committed the instant offense while under any criminal justice sentence[.]

U.S.S.G. § 4A1.1, cmt. n. 5:

Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence.

Statement of the Case

Reed was sentenced in the New Mexico federal district court to 76 months in prison for violating Title 18 United States Code Section 1791(a)(2) (Attempting to possess contraband in prison). Towards the end of his sentence the Bureau of Prisons transferred him to Dismas Charities Comprehensive Sanctions Center in El Paso, Texas. Reed left this facility without permission, and was convicted herein with escape from custody, in violation of Title 18, United States Code, Section 751(a).

On appeal, Reed argued (in part) as follows. Section 4A1.1 of the Sentencing Guidelines directs that a defendant is to be assessed an escape “status point” if he committed the instant offense while under a criminal justice sentence. If however, the defendant’s offense of conviction is escape, assessment of this additional point constitutes multiple punishment for the same act, in violation of the Double Jeopardy Clause. Stated another way, escape is not made worse by being committed while the defendant is in custody. It is only made possible because he is in custody.

Reed’s multiple punishments argument goes something like this:

“Mr. Reed, your base offense level is 7 because you escaped while under a criminal justice sentence.”

“And Mr. Reed, we are adding a status point because you escaped while under a criminal justice sentence.”

The Fifth Circuit held that Reed’s argument was foreclosed by circuit precedent, citing *United States v. Vickers*, 891 F.2d 86, 87 (5th Cir. 1989). *United States v. Reed*, No. 26-50066, 2026 U.S. App. LEXIS 24646, at *2 (5th Cir. Aug. 14, 2026).

First reason for granting the Writ: Multiple punishments for the same act violate the Double Jeopardy Clause.

The Double Jeopardy Clause provides: "Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. This provision “was designed as much to prevent the criminal from being twice punished for the same offence as from being twice tried for it.” *Witte v. United States*, 515 U.S. 389, 395-96 (1995) (citing *Ex parte Lange*, 85 U.S. 163, 168 (1873)). Courts may not impose more than one punishment for the same offense. *Witte*, 515 U.S. at 397; *Schiro v. Farley*, 510 U.S. 222, 229 (1994) (Double Jeopardy Clause protects against multiple punishments for the same offense).

Sentencing enhancements in the Sentencing Guidelines constitute “punishment.” *See United States v. Watts*, 519 U.S. 148, 153-54 (1997) (The Guidelines provide incremental punishment). When a district court relies on conduct that was necessary to satisfy an element of the defendant’s conviction, yet uses that same conduct to enhance the defendant’s guideline range, the defendant is being improperly punished twice for the same act. *United States v. Tenuto*, 593 F.3d 695, 697 (7th Cir. 2010).

The Southern District of New York has refused to assess status points for escape when the defendant’s offense of conviction is escape, characterizing this as double punishment:

Where a defendant is being sentenced for escape, however, application of § 4A1.1(d) constitutes impermissible double punishment. Based on the Sentencing Commission's evaluation of the elements of the substantive offense and its relative seriousness, § 2P1.1(a)(1) of the Guidelines assigns a base offense level of 13 to the crime of escape from custody.

By also applying § 4A1.1(d) in calculating a defendant's Criminal History Category, the sentence for the crime of escape from custody is improperly enhanced, for a charge of escape will always carry with it the additional penalty of § 4A1.1(d). *Section 4A1.1(d) thus should not be applied in escape cases.* (Emphasis added.)

United States v. Clark, 711 F. Supp. 736, 737 (S.D.N.Y. 1989).

Second reason for granting the Writ: The Fifth Circuit's holding is inconsistent with Supreme Court precedent.

In *Stinson v. United States*, 508 U.S. 36 (1993), the Supreme Court held that the guidelines commentary is "authoritative *unless it violates the Constitution* or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." (Emphasis added.) *Id.* at 38.

In *Barrett v. United States*, 607 U.S. 128 (2026), wherein the defendant was convicted of seven robberies (one of which involved a killing), the Supreme Court analyzed the relationship between two provisions found in Title 18 U.S.C. § 924. *Id.* at 131. Section 924(c)(1)(A)(i) criminalizes using, carrying, or possessing a firearm in connection with a federal crime of violence or drug trafficking crime, and carries a minimum penalty of five years in prison. 18 U.S.C. § 924 (c)(1)(A)(i). If however, a defendant engages in conduct referenced in § 924 (c)(1)(A)(i), and death results, the maximum penalty can be capital punishment. 18 U.S.C. § 924 (j)(1).

The lower court (Second Circuit) held that the defendant's conduct in violating both provisions, amounted to two convictions, and the court ordered two separate punishments. *United States v. Barrett*, 102 F.4th

60, 89-91, 93, 96 (2nd Cir. 2024). Appellant Barrett argued that this violated his rights under the Double Jeopardy Clause. *Barrett*, 607 U.S. at 138.

The Supreme Court summarized the issue before it this way:

We consider here whether a defendant who commits *a single act* that violates both §924(c)(1)(A)(i) and §924(j) may be convicted only under one provision or the other, or instead may suffer two convictions. (Emphasis added.)

Barrett, 607 U.S. at 131. The Court noted that both subsections contained identical elements:

Every defendant subject to subsection (j) has also, necessarily, violated subsection (c). . . . Subsection (c)(1)(A)(i) and subsection (j) define the same offense under the test set forth in *Blockburger v. United States*, 284 U. S. 299 (1932).

Barrett, 607 U.S. at 131.

Subsection (j) shares subsection (c)’s elements but not its sentencing scheme.

Id. at 147.

The Court ultimately determined that the Second Circuit was wrong; Congress had not authorized multiple convictions nor multiple punishments:

This case asks whether a different subsection of §924, subsection (j), *piles yet another layer of punishment atop* [.] (Emphasis added.)

Id. at 136.

This case therefore turns on the analysis's second step: discerning whether Congress clearly intended to authorize multiple convictions for one act that violates both §924(c)(1)(A)(i) and §924(j).

Id. at 139-40.

The assumption underlying the *Blockburger* rule is that Congress ordinarily does not intend to punish the same offense under two different statutes, where punishment means a criminal conviction and not simply the imposition of sentence.

Id. at 141-42.

Congress has not authorized convictions under both 18 U. S. C. §§924(c)(1)(A)(i) and (j) for one act that violates both provisions.

Id. at 149.

Justice Gorsuch's concurrence adds the following:

Here, all agree that §924(c)(1)(A) has no element that §924(j) lacks. So the two provisions create the same offense, and the Double Jeopardy Clause would bar the second prosecution.

Id. at 150.

Mr. Barrett really was charged twice for one offense. He really was convicted twice. Before our intervention, he really was set to be criminally punished twice. And whatever Congress might or might not intend, *that* is double jeopardy.

Id. at 154.

Conclusion

For the foregoing reasons, Petitioner Reed respectfully urges this Court to grant a writ of certiorari to review the opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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Certificate of Service

This is to certify that a true and correct copy of the above and foregoing Petition for Writ of Certiorari has this day been mailed by the U.S. Postal Service, First Class Mail, to the Solicitor General of the United States, Room 5614, Department of Justice, 10th Street and Constitution Avenue, N.W. Washington, D.C. 20530.

SIGNED this 18th day of September, 2026.

/s/ John A. Kuchera
John A. Kuchera,
Attorney for Aaron Davis Reed

Appendix A



United States v. Reed

United States Court of Appeals for the Fifth Circuit

August 14, 2026, Filed

No. 26-50066 Summary Calendar

Reporter

2026 U.S. App. LEXIS 24646 *; 2026 LX 400461

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus AARON DAVIS REED, Defendant-Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] Appeal from the United States District Court for the Western District of Texas. USDC No. 3:25-CR-37-1.

United States v. Reed, 2025 U.S. Dist. LEXIS 209697 (Oct. 21, 2025)

Disposition: AFFIRMED.

Counsel: For United States of America, Plaintiff - Appellee: Zachary Carl Richter, Assistant U.S. Attorney, U.S. Attorney's Office Western District of Texas, Austin, TX; Laura Elena Durbin, U.S. Attorney's Office Western District of Texas, San Antonio, TX.

For Aaron Davis Reed, Defendant - Appellant: John Andrew Kuchera, Waco, TX.

Judges: Before DAVIS, STEWART, and DUNCAN, Circuit Judges.

Opinion

PER CURIAM:*

Aaron Davis Reed appeals from the 18-month sentence of imprisonment imposed following his guilty plea conviction for escape. He first challenges the procedural reasonableness of the sentence on the ground that the district court mistakenly believed that he had escaped twice instead of once. Because the district court admitted its misunderstanding during sentencing and stated that the error had no effect on the sentence, Reed has not shown that the district court selected the sentence based on a clearly erroneous fact. *See Gall v. United States, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007)*. In any event, the district court's statement shows that any error was harmless. *See United States v. Robinson, 741 F.3d 588, 601 (5th Cir. 2014)*.

For the first time on appeal, Reed argues that the district court erred by adding one criminal [*2] history point under *U.S.S.G. § 4A1.1(e)* for committing the instant offense while under a criminal justice sentence because that adjustment punishes him a second time for the same underlying act of escape. Although he acknowledges that this

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5*.

2026 U.S. App. LEXIS 24646, *2

argument is contrary to United States v. Vickers, 891 F.2d 86, 87 (5th Cir. 1989), he contends that Vickers was undermined in this context by Stinson v. United States, 508 U.S. 36, 38, 113 S. Ct. 1913, 123 L. Ed. 2d 598 (1993). As Reed is not relying on any cases that specifically support his argument, he has not shown plain error on this basis. See United States v. Vargas-Soto, 700 F.3d 180, 182 (5th Cir. 2012).

AFFIRMED.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See *FED. R. APP. P. 41(b)*. The court may shorten or extend the time by order. See *5TH CIR. R. 41 I.O.P.*

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