

No. __-_____

IN THE SUPREME COURT OF THE UNITED STATES

PEDRO MUNOZ,
and PEDRO MUNOZ RUIZ,
also known as Pedro Carrillo, Luis A. Ruiz, Luis Alberto Ruiz, Pedro Ruiz, Pedro Martinez

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10575
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 12, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PEDRO MUNOZ,

Defendant-Appellant

Consolidated with No. 18-10583

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PEDRO MUNOZ RUIZ, also known as Pedro Carrillo, also known as Luis A. Ruiz, also known as Luis Alberto Ruiz, also known as Pedro Ruiz, also known as Pedro Martinez,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 4:10-CR-61
USDC No. 4:17-CR-230

Before BENAVIDES, HIGGINSON, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Pedro Munoz appeals the 151-month sentence imposed on his guilty plea conviction for possessing with intent to distribute a controlled substance. *See* 21 U.S.C. § 841(a)(1), (b)(1)(B). Additionally, he appeals the 24-month revocation sentence imposed on the related revocation of his term of supervised release on an earlier conviction for illegal reentry. *See* 18 U.S.C. § 3583(e). The district court ordered that these sentences be served consecutively. We affirm both sentences.

Ordinarily, we review an original sentence for reasonableness in light of the sentencing factors of 18 U.S.C. § 3553(a). *See Gall v. United States*, 552 U.S. 38, 46, 49-50 (2007). In reviewing for reasonableness, we “merely ask[] whether the trial court abused its discretion.” *Rita v. United States*, 551 U.S. 338, 351 (2007). We ordinarily review a revocation sentence to determine if it is plainly unreasonable in light of certain sentencing factors set forth in § 3553(a), asking whether the district court abused its discretion. *See United States v. Miller*, 634 F.3d 841, 843-44 (5th Cir. 2011).

Under the bifurcated review process adopted in *Gall*, we first examine whether the district court committed procedural error. *See* 552 U.S. at 51. We employ a bifurcated process in the revocation context as well, applying the revocation abuse-of-discretion standard in analyzing the substantive reasonableness of a revocation sentence after examining for procedural error. *See Miller*, 634 F.3d at 842-43. But review of any claim is for plain error if “the defendant has the opportunity to seek vindication of [his] rights in district

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

court” but fails to avail himself of that opportunity. *Puckett v. United States*, 556 U.S. 129, 136 (2009).

The parties disagree about the standard of review applicable to the claims that the district court did not consider Munoz’s arguments for downward variances and for concurrent sentences and did not adequately explain its sentences and consequently that the sentences are procedurally unreasonable. Munoz did not preserve his procedural arguments. *See, e.g., United States v. Rouland*, 726 F.3d 728, 732 (5th Cir. 2013). However, he has shown no error at all and thus no plain error. *See United States v. Teuschler*, 689 F.3d 397, 400 (5th Cir. 2012). We need not decide whether plain error applies to his challenge to substantive reasonableness, as Munoz does not prevail under the ordinary standard. *See United States v. Rodriguez*, 523 F.3d 519, 525 (5th Cir. 2008).

A sentencing judge need not state “explicitly that he . . . heard and considered” every argument the defendant made. *Rita*, 551 U.S. at 359. The records in these consolidated cases make clear that the “sentencing judge listened to each argument.” *Id.* at 358. The record shows also that the district court considered the presentence report’s ample evidence of Munoz’s extensive criminal history. Additionally, the district court remarked that its sentences were appropriate in light of applicable factors listed in 18 U.S.C. § 3553(a). Those remarks constituted an adequate explanation of the sentences in these cases and of the reasons for rejecting, knowingly but implicitly, any downward variance. *See Rita*, 551 U.S. at 345; *see also United States v. Mares*, 402 F.3d 511, 519 (5th Cir. 2005).

With respect to substantive reasonableness, a within-guidelines sentence “is presumptively reasonable.” *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006). Also, a presumption of substantive reasonableness

attaches to a revocation sentence within the policy statement advisory range. *United States v. Lopez-Velasquez*, 526 F.3d 804, 809 (5th Cir. 2008).

Munoz's suggestion that we reweigh the § 3553(a) factors is unavailing. *See Gall*, 552 U.S. at 51. In light of the district court's thorough review of the records and recitation of the reasons justifying the sentences, Munoz offers no adequate basis for forgoing application of the presumption of reasonableness that attaches to each and for supplanting each with a sentence of this court's choice. *See id.*

Nor does Munoz succeed in overcoming his failure to show that either sentence is unreasonable in its own right by attacking the cumulative sentence. The district court's decision to order that the sentences be served consecutively was authorized by statute and recommended by the Sentencing Guidelines. *See* 18 U.S.C. § 3584(a); U.S.S.G. § 7B1.3(f) & comment. (n.4), p.s. Given the deference owed the sentencing court, we see no reason to disturb the district court's exercise of its discretion.

AFFIRMED.

APPENDIX B

United States District CourtNorthern District of Texas
Fort Worth Division

AUG 25 2010

CLERK, U.S. DISTRICT COURT

By

Deputy

UNITED STATES OF AMERICA §

v. §

Case Number: 4:10-CR-061-A(01)

PEDRO MUNOZ §

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Shawn Smith. The defendant, PEDRO MUNOZ, was represented by Federal Public Defender through Assistant Federal Public Defender William Hermesmeier.

The defendant pleaded guilty on May 4, 2010 to the one count indictment filed on April 14, 2010. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
8 U.S.C. § 1326(a) & (b)(1)/(2)	ILLEGAL REENTRY AFTER DEPORTATION	March 21, 2010	1

As pronounced and imposed on August 20, 2010, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months.

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

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

Pursuant to 18 U.S.C. §3583(d), as a condition of supervised release, upon the completion of the sentence of imprisonment the defendant shall be surrendered by the Federal Bureau of Prisons to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not possess illegal controlled substances.
2. The defendant shall not commit another federal, state, or local crime.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.

6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his or her dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 25 day of August, 2010.



JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE

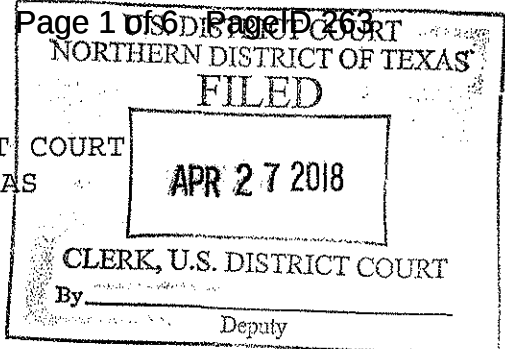
I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 200__ to _____
at _____, with a certified copy of this
Judgment.

Randy Ely
United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal

APPENDIX C



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

§

VS.

§

§ NO. 4:10-CR-061-A

§

PEDRO MUNOZ RUIZ

§

JUDGMENT OF REVOCATION AND SENTENCE

Came on to be heard, as contemplated by Fed. R. Crim. P. 32.1, the motion of United States of America to revoke the term of supervised release imposed on defendant, PEDRO MUNOZ RUIZ. After having considered the grounds of the government's motion, defendant's admissions, and statements of counsel and defendant, the court has determined that the term of supervised release imposed on defendant should be revoked and that defendant should be sentenced to a term of imprisonment of 24 months, to be served consecutive to the term of imprisonment imposed in No. 4:17-CR-230-A, and to serve a 12-month term of supervised release upon discharge from prison, to be served concurrently with the term of supervised release imposed in No. 4:17-CR-230-A.

The court finds and concludes that:

(a) Defendant was given, in a timely manner, written notice of his alleged violations of the term of supervised release upon which the motion to revoke is based;

(b) The motion to revoke the term of supervised release was served on defendant in a timely manner prior to the hearing;

(c) There was a disclosure to defendant, and his attorney, of the evidence against defendant; and

(d) The hearing was held within a reasonable time.

Other findings and conclusions of the court were stated by the court into the record at the hearing. The court adopts all such findings and conclusions as part of this judgment.

In reaching the conclusions and making the determinations and rulings announced at the hearing, and as stated in this judgment, the court considered all relevant factors set forth in 18 U.S.C. § 3553(a) that are proper for consideration in a revocation context.

The court ORDERS, ADJUDGES, and DECREES that the term of supervised release, as provided by the judgment in a criminal case signed August 25, 2010, imposed on August 20, 2010, be, and is hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, PEDRO MUNOZ RUIZ, be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months, to be served consecutive to the term of imprisonment imposed in No. 4:17-CR-230-A, to be followed by a

term of supervised release of 12 months, which will be served concurrently with the term of supervised release imposed in No. 4:17-CR-230-A.

The court further ORDERS, ADJUDGES, and DECREES that, while on supervised release, defendant shall comply with the following Standard and Special Conditions of Supervision:

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, ammunition, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district in which he is being supervised without the permission of the court or the U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his or her dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.

9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Special Conditions of Supervision

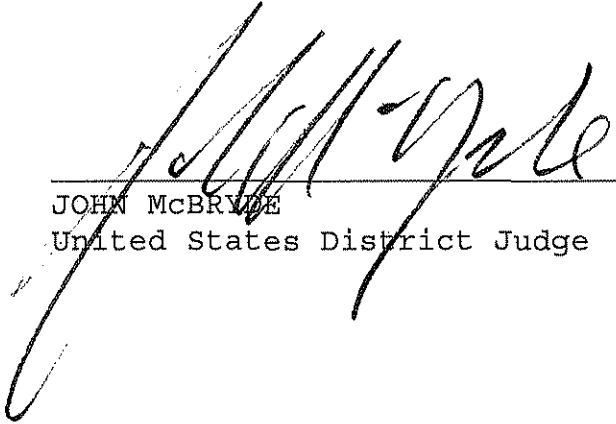
1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provisions of the 1994 crime bill.
5. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$25 per month.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by Title 18 United States Code section 3583(f).

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

The date of imposition of the sentence provided by this judgment is April 27, 2018.

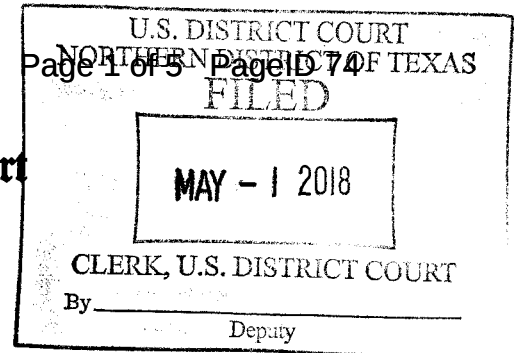
SIGNED April 27, 2018.



JOHN MCBRYDE
United States District Judge

Personal information about the defendant is set forth on the attachment to this Judgment of Revocation and Sentence.

APPENDIX D

United States District CourtNorthern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:17-CR-230-A(01)

PEDRO MUNOZ RUIZ, a/k/a "Pedro Carrillo", "Luis A. Ruiz", "Luis Alberto Ruiz", "Pedro Ruiz", "Pedro Martinez"

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Aisha Saleem. The defendant, PEDRO MUNOZ RUIZ, a/k/a "Pedro Carrillo", "Luis A. Ruiz", "Luis Alberto Ruiz", "Pedro Ruiz", "Pedro Martinez" was represented by Federal Public Defender through Assistant Federal Public Defender Michael A. Lehmann.

The defendant pleaded guilty on November 22, 2017 to the one count information filed on November 8, 2017. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

Title & Section / Nature of Offense

21 U.S.C. § 841(a)(1) and (b)(1)(B)

Possession with Intent to Distribute a Controlled Substance

Date Offense Concluded

09/14/2017

Count

1

As pronounced and imposed on April 27, 2018, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 151 months. This sentence shall run consecutively to any sentence imposed in the pending supervised release revocation proceeding in Case No. 4:10-CR-061-A(01), pending in the Northern District of Texas, Fort Worth Division.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of four (4) years. The court imposed a term of supervised release because it will provide an added measure of deterrence and protection based on the facts and circumstances of this case.

Pursuant to 18 U.S.C. §3583(d), as a condition of supervised release, upon the completion of the sentence of imprisonment the defendant shall be surrendered by the Federal Bureau of Prisons to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not possess illegal controlled substances.
2. The defendant shall not commit another federal, state, or local crime.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$25 per month.
6. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.

2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 1st day of May, 2018.



JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2018 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal