

No. \_\_-\_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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CHASE MATHENY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

## APPENDIX A

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

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No. 18-11291  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 26, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CHASE MATHENY,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:18-CR-72-1

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Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:\*

Chase Matheny pleaded guilty to possession of stolen mail, and he received a sentence of 30 months in prison and a term of supervised release. On appeal, he challenges a condition of supervised release that requires him to “permit a probation officer to visit [him] at any time at home or elsewhere and permit confiscation of any contraband observed in plain view.” According

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to Matheny, this visitation condition is unreasonable and unconstitutionally overbroad.

The Government moves for summary affirmance on the ground that our recent decision in *United States v. Cabello*, 916 F.3d 543, 544 (5th Cir. 2019), forecloses Matheny's challenge to the visitation condition. Matheny concedes that his sole appellate argument is foreclosed by *Cabello*, but he seeks to preserve the issue for further review.

In *Cabello*, this court found no plain error in the imposition of the visitation condition. *Cabello*, 916 F.3d at 544. As Matheny concedes, review in this case is also for plain error because he did not object to the condition. *See United States v. Jones*, 484 F.3d 783, 792 (5th Cir. 2007). *Cabello* is directly on point and dictates that the judgment against Matheny be affirmed. Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The Government's alternative motion for an extension of time for briefing is DENIED.

Although neither party has noted the error, the written judgment indicates that Matheny received a three-year term of supervised release, but the oral pronouncement of sentence reflects a two-year term of release. Where there is a conflict between the oral pronouncement of a sentence and the written judgment, the oral pronouncement prevails. *United States v. Torres-Aguilar*, 352 F.3d 934, 935 (5th Cir. 2003). Therefore, the case is REMANDED for the limited purpose of correcting the clerical error in the judgment. *See* FED. R. CRIM. P. 36; *United States v. Johnson*, 588 F.2d 961, 964 (5th Cir. 1979).

## APPENDIX B

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF TEXAS  
Fort Worth Division

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

v.

Case Number: 4:18-CR-00072-Y(1)

J. Stevenson Weimer, assistant U.S. attorney

CHASE MATHENY

T. W. Brown, attorney for the defendant

On May 9, 2018, the defendant, Chase Matheny, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

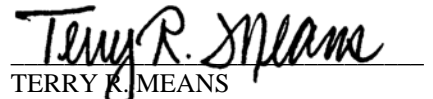
<u>TITLE &amp; SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. § 1708	Possession of Stolen Mail	October 20, 2017	1

The defendant is sentenced as provided in pages two through four of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty 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.

Sentence imposed September 18, 2018.

  
TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

Signed September 20, 2018.

Defendant: Chase Matheny

Case Number: 4:18-CR-00072-Y(1)

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## IMPRISONMENT

The defendant, Chase Matheny, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 30 months on count one of the one-count indictment. The sentence shall run consecutively to any sentences that may be imposed in case nos. 1555329, 1555333 and 1518281D in Criminal Court No. 3, Tarrant County, Texas.

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

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years on count one of the one-count indictment.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer in a manner and frequency directed by the Court or probation officer;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and 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;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the probation officer;



Defendant: Chase Matheny

Case Number: 4:18-CR-00072-Y(1)

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report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons;

not possess any mail items in any name other than his true and legal name, Chase Matheny, unless the items were mailed to a physical address, post office box, or other mailing address on file with the probation office prior to the date posted on the mailed item. He shall not possess, handle, or distribute any identification, credit cards, bank checks or other financial instruments in any name other than his true name, Chase Matheny;

participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month;

refrain from any unlawful use of a controlled substance. The defendant shall submit 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;

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 (copayment) at the rate of at least \$25 per month; and

make all court-ordered child support payments on a timely basis, producing proof of payment to the probation officer within the first 5 days of each month, whether as a part of a written report required by the probation officer or otherwise.

### **FINE/RESTITUTION**

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Defendant: Chase Matheny

Case Number: 4:18-CR-00072-Y(1)

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**RETURN**

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
United States marshal

BY \_\_\_\_\_  
deputy marshal