

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

IN THE SUPREME COURT OF THE UNITED STATES

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GARY E. LAROCK, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas imposing a sentence of imprisonment and a term of supervised release

Appendix C Judgment of the United States District Court revoking supervised release, imposing a 24-month term of imprisonment and re-imposing a 180-month term of supervised release

## APPENDIX A

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

\_\_\_\_\_  
No. 18-11400  
Summary Calendar  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

July 22, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GARY E. LAROCK, JR.,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 6:13-CR-44-1  
\_\_\_\_\_

Before KING, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:\*

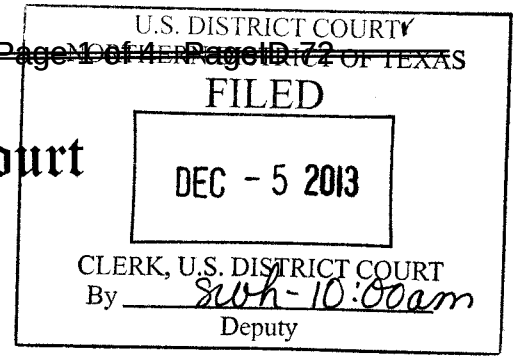
Gary E. Larock, Jr., pleaded true to violating the terms of his supervised release from his conviction for failure to register as a sex offender, and the district court sentenced him to 24 months of imprisonment and a 180-month term of supervised release. On appeal, he argues that the district court plainly erred by imposing, without explanation, a standard condition of supervised release requiring that he “permit a probation officer to visit [him] at any time

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

at home or elsewhere and permit confiscation of any contraband observed in plain view of the probation officer.”

As Larock concedes, our review is for plain error only. *See United States v. Salazar*, 743 F.3d 445, 448 (5th Cir. 2014). We recently rejected materially indistinguishable arguments on plain error review. *See United States v. Cabello*, 916 F.3d 543, 544 (5th Cir. 2019). Thus, the judgment of the district court is AFFIRMED.

## APPENDIX B



**United States District Court**  
Northern District of Texas  
San Angelo Division

UNITED STATES OF AMERICA

v.

Case Number 6:13-CR-044-01-C  
USM No. 46355-177

GARY E. LAROCK, JR.  
Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, GARY E. LAROCK, JR., was represented by David E. Sloan.

The defendant pleaded guilty to count 1 of the indictment filed on 06/12/2013. Accordingly, the court has adjudicated that the defendant is guilty of the following offense:

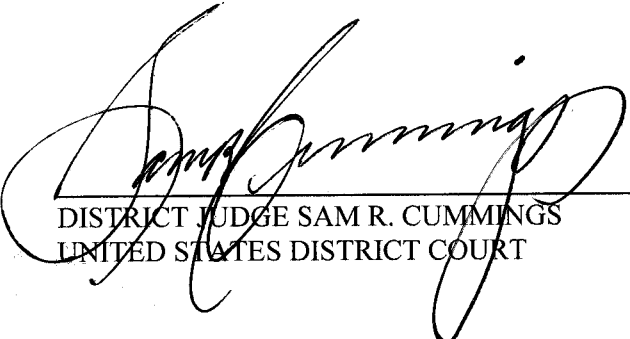
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
18 U.S.C. § 2250(a)	Failure to Register as a Sex Offender	02/07/2013 to 06/04/2013	1

As pronounced on 12/05/2013, the defendant is sentenced as provided in pages 1 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant shall 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 shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Signed this the 5th day of December, 2013.

  
DISTRICT JUDGE SAM R. CUMMINGS  
UNITED STATES DISTRICT COURT

Defendant: GARY E. LAROCK, JR.  
Case Number: 6:13-CR-044-01-C

Judgment--Page 2 of 4

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 37 months with this term of imprisonment to be served concurrently with the sentence imposed in Case No. DOF-13-01837, 119th District Court, Concho County, Texas.

The defendant shall remain in custody pending service of sentence.

**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 Marshal



Defendant: GARY E. LAROCK, JR.

Judgment--Page 3 of 4

Case Number: 6:13-CR-044-01-C

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 15 years.

The defendant shall report to the Probation Officer in a manner and frequency directed by the Court or Probation Officer.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall 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.

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, destructive device or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.
- the defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) 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 probation officer.
- 10) 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 probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) 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.
- 13) 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**

While the defendant is on supervised release pursuant to this Judgment:

1. The defendant shall participate in sex offender treatment services as directed by the probation officer until successfully discharged. These services may include psycho-physiological testing (i.e. clinical polygraph, plethysmograph, and the ABEL screen) to monitor the defendant's compliance, treatment progress, and risk to the community. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20.00 per month.
2. The defendant shall have no unsupervised contact with persons under the age of 18, nor shall the defendant loiter near places where children may frequently congregate. The defendant shall neither seek nor maintain employment or volunteer work at any location and/or activity where persons under the age of 18 congregate and the defendant shall not date or befriend anyone who has children under the age of 18, without prior permission of the probation officer.
3. The defendant shall neither possess nor have under his control any sexually oriented, or sexually stimulating materials of adults or children. The defendant shall not patronize any place where such material is available.
4. The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20.00 per month.
5. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20.00 per month.
6. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.

## APPENDIX C

**United States District Court**Northern District of Texas  
San Angelo Division

UNITED STATES OF AMERICA

v.

Case Number 6:13-CR-044-01-C

USM No. 46355-177

GARY E. LAROCK, JR.,  
Defendant.**JUDGMENT IN A CRIMINAL CASE**(For **Revocation** of Supervised Release)

(For Offenses Committed On or After November 1, 1987)

The defendant, GARY E. LAROCK, JR., was represented by Shery Kime-Goodwin.

**THE DEFENDANT:**

The Defendant admitted true as to all allegations contained in said motion.

Violation NumberNature of ViolationDate of ViolationSee Attached copy of  
Petition for Offender  
Under Supervision

Certified copy of the Judgment imposed on 12/05/2013, in the Northern District of Texas, San Angelo Division, is attached.

As pronounced on 10/12/2018, the Motion to Revoke is granted and the defendant is sentenced as provided in pages 1 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall 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.

Signed this the 12th day of October, 2018.

  
 SENIOR DISTRICT JUDGE SAM R. CUMMINGS  
 UNITED STATES DISTRICT COURT

Defendant: GARY E. LAROCK, JR.  
Case Number: 6:13-CR-044-01-C

Judgment--Page 2 of 4

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months to run consecutive to any sentence imposed in Case No. 2017-413-359 pending in the 364<sup>th</sup> District Court, Lubbock County, Texas, and DOF-17-1978 pending in the 119<sup>th</sup> District Court, Concho County, Texas.

The defendant shall remain in the custody of the U.S. Marshal Service.

The Court recommends incarceration at FCI Fort Worth, Texas.

**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 Marshal

Defendant: GARY E. LAROCK, JR.

Judgment--Page 3 of 4

Case Number: 6:13-CR-044-01-C

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 180 months.

The defendant shall report to the Probation Officer in a manner and frequency directed by the Court or Probation Officer.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall 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.

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.
- The defendant shall not possess a firearm, destructive device or any other dangerous weapon.
- The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.
- the defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) 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 probation officer.
- 10) 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 probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) 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.
- 13) 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

While the defendant is on supervised release pursuant to this Judgment the defendant shall comply with the standard conditions recommended by the U.S. Sentencing Commission and shall comply with the following additional conditions:

1. The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25.00 per month.
2. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.
3. The defendant shall participate in sex offender treatment services as directed by the probation officer until successfully discharged. These services may include psycho-physiological testing (i.e. clinical polygraph, plethysmograph, and the ABEL screen) to monitor the defendant's compliance, treatment progress, and risk to the community. The defendant shall contribute to the costs of services rendered (co-payment) at a rate of at least \$25.00 per month.
4. The defendant shall have no unsupervised contact with persons under the age of 18, nor shall the defendant loiter near places where children may frequently congregate. The defendant shall neither seek nor maintain employment or volunteer work at any location and/or activity where persons under the age of 18 congregate and the defendant shall not date or befriend anyone who has children under the age of 18, without prior permission of the officer.
5. The defendant shall neither possess nor have under his control any sexually oriented, or sexually stimulating materials of adults or children. The defendant shall not patronize anyplace where such material is available.
6. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25.00 per month.