

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHN CHRISTOPHER BADGETT,

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**

United States Court of Appeals
Fifth Circuit

FILED

April 28, 2020

Lyle W. Cayce
Clerk

No. 19-10146

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JOHN CHRISTOPHER BADGETT,

Defendant - Appellant

Appeals from the United States District Court
for the Northern District of Texas

Before OWEN, Chief Judge, and HIGGINBOTHAM and WILLETT, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

Appellant John Christopher Badgett was sentenced to 48 months' imprisonment after he violated the terms of his supervised release. On appeal, he challenges the constitutionality of 18 U.S.C. § 3583(g), which mandates a term of imprisonment for any offender who violates certain conditions of supervised release relating to drugs and firearms. Badgett also contends that his revocation sentence is substantively unreasonable. Finding no error, we affirm.

I.

In 2009, Badgett pleaded guilty in the District of Idaho to six counts of armed bank robbery.¹ He received six concurrent 108-month terms of imprisonment, with six concurrent five-year terms of supervised release to follow. Badgett was released from prison in 2015, and jurisdiction over his supervised release was transferred to the Northern District of Texas in 2016.

In July of 2018, the probation office reported that Badgett had violated the terms of his supervised release by (1) consuming alcohol in a motor vehicle, a state offense; (2) absconding to live in Alaska without the permission of his probation officer; and (3) failing to report for a mandatory drug test. The probation office calculated an advisory imprisonment range of five to eleven months on each of Badgett's six terms of supervised release,² though it noted the district court had discretion to impose up to three years each.³ It also noted that incarceration for the drug-testing violation would be mandatory under 18 U.S.C. § 3583(g), which requires the district court to revoke supervised release and impose "a term of imprisonment" on any defendant who:

- (1) possesses a controlled substance . . . ;
- (2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;
- (3) refuses to comply with drug testing imposed as a condition of supervised release; or

¹ The Idaho proceeding consolidated three separate indictments from Idaho, California, and Wyoming, which together charged Badgett with robbing seven banks across six states in the fall of 2007. Badgett consented to transfer the California and Wyoming cases to Idaho, where he pleaded guilty to six charges of armed bank robbery in exchange for the dismissal of three other counts. The District of Idaho sentenced Badgett on all six counts and issued a single written judgment of conviction.

² See U.S.S.G. § 7B1.4(a).

³ See 18 U.S.C. § 3583(e)(3) (providing a maximum revocation sentence of three years "if the offense that resulted in the term of supervised release is . . . a class B felony," a category that includes armed bank robbery).

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year.⁴

Pursuant to the probation office’s report, the Government moved to revoke Badgett’s supervised release. At a revocation hearing on January 31, 2019, the district court advised Badgett that if he pleaded true to the violations, his supervised release would be revoked and he would be reincarcerated. After affirming that he understood the consequences of his plea, Badgett “admit[ted] the truthfulness of each of the allegations” against him. The district court sentenced Badgett to eight months on each term of supervised release—the middle of his five-to-eleven-month Guidelines range. The sentences were to run consecutively, for a total of 48 months’ imprisonment. The court did not order any additional terms of supervision.

Badgett now appeals his revocation sentence on two grounds. First, he contends that 18 U.S.C. § 3583(g)’s mandatory-imprisonment provision is unconstitutional under the Supreme Court’s decision in *United States v. Haymond*.⁵ Second, Badgett argues that his sentence is substantively unreasonable “because it was greater than necessary to achieve the purposes of sentencing.”

II.

A.

Because Badgett raises his constitutional challenge for the first time on appeal, our review is for plain error.⁶ Under the four-prong framework of plain-error review, Badgett must demonstrate (1) an error (2) that is “clear or obvious” and that (3) “affected [his] substantial rights.”⁷ If the first three prongs are satisfied, we may exercise our discretion to correct the error only if

⁴ *Id.* § 3583(g)(1)–(4).

⁵ 139 S. Ct. 2369 (2019).

⁶ *United States v. Williams*, 847 F.3d 251, 254 (5th Cir. 2017) (When an objection is “admittedly unpreserved, we review for plain error.”).

⁷ *Puckett v. United States*, 556 U.S. 129, 135 (2009).

it (4) “seriously affects the fairness, integrity or public reputation of judicial proceedings.”⁸

B.

Badgett contends that the district court committed plain error by sentencing him under an unconstitutional statute. In his view, 18 U.S.C. § 3583(g)—the provision that required the district court to impose a term of imprisonment upon finding that he failed to comply with mandatory drug testing—violates the Fifth and Sixth Amendments by “failing to afford [the defendant] the right to a jury trial to determine the truth of the allegations against him.” This argument relies on *United States v. Haymond*, a 2019 decision in which the Supreme Court struck down 18 U.S.C. § 3583(k), a separate provision of the federal supervised-release statute that imposed a five-year minimum sentence on convicted sex offenders who committed certain specified sex offenses while on supervised release.⁹

Five Justices agreed that § 3583(k) was unconstitutional.¹⁰ Because only three joined Justice Gorsuch’s plurality opinion, however, Justice Breyer’s narrower concurrence controls.¹¹ Justice Breyer emphasized that revocation “is typically understood as ‘part of the penalty for the initial offense’”—and

⁸ *Id.* (internal alterations omitted) (quoting *United States v. Olano*, 507 U.S. 725, 736 (1993)).

⁹ 139 S. Ct. at 2373 (plurality opinion). The relevant portion of § 3583(k) provided: If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment . . . not less than 5 years.

¹⁰ Although *Haymond* had not been decided at the time of Badgett’s revocation proceeding, relief is not automatically barred since “newly announced rules” apply to cases pending on direct appeal. *United States v. Knowles*, 29 F.3d 947, 951 (5th Cir. 1994) (citing *Griffith v. Kentucky*, 479 U.S. 314 (1987)).

¹¹ See *Marks v. United States*, 430 U.S. 188, 193 (1977) (“When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” (internal quotation marks omitted)).

therefore not subject to the Sixth Amendment’s jury-trial right.¹² However, three features of this particular provision, “considered in combination,” led him “to think it is less like ordinary revocation and more like punishment for a new offense, to which the jury right would typically attach”¹³:

First, § 3583(k) applies only when a defendant commits a discrete set of federal criminal offenses specified in the statute. *Second*, § 3583(k) takes away the judge’s discretion to decide whether violation of a condition of supervised release should result in imprisonment and for how long. *Third*, § 3583(k) limits the judge’s discretion in a particular manner: by imposing a mandatory minimum term of imprisonment of “not less than 5 years” upon a judge’s finding that a defendant has “commit[ted] any” listed “criminal offense.”¹⁴

Badgett contends that § 3583(g) is unconstitutional under *Haymond* because it shares two of § 3583(k)’s problematic features: It applies only when a defendant engages in certain specified behaviors, such as failing to comply with mandatory drug testing, and it removes the district court’s discretion to determine whether a term of imprisonment is appropriate. Even assuming these analogies are apt¹⁵ and disregarding the *Haymond* plurality’s explicit refusal to “express a view on . . . § 3583(g),”¹⁶ Badgett’s argument is unavailing. As we have repeatedly observed, “[b]ecause there currently is no caselaw from either the Supreme Court or this court extending *Haymond* to § 3583(g)

¹² *Haymond*, 139 S. Ct. at 2386 (Breyer, J., concurring in the judgment) (quoting *Johnson v. United States*, 529 U.S. 694, 700 (2000)).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Because we review only for plain error, we need not decide the merits of Badgett’s argument for extending *Haymond*. We note, however, that unlike the offenses specified by § 3583(k), the four drug- and firearms-related violations that trigger § 3583(g) are not “a discrete set of federal criminal offenses.” *Id.* Rather, as the Government explained, § 3583(g) “lists behaviors that the court expects former prisoners to avoid during supervision, some of which cover noncriminal conduct.” Besides, even under the reading most favorable to Badgett, § 3583(g) shares only two of the three features identified by Justice Breyer as problematic *in conjunction*.

¹⁶ *Id.* at 2382 n.7 (plurality opinion).

revocations,” the district court could not have committed any “clear or obvious” error in applying the statute.¹⁷

III.

A.

Badgett next contends that his 48-month revocation sentence is substantively unreasonable. Because Badgett preserved this objection by raising it in the district court, we review “for an abuse of discretion, examining the totality of the circumstances.”¹⁸ A revocation “sentence is substantively unreasonable if it (1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.”¹⁹ A revocation sentence “within the bounds of the [defendant’s] Guideline range . . . is presumptively reasonable.”²⁰

B.

Badgett fails to identify any objective error in the district court’s within-Guidelines revocation sentence. He argues only that the court should have

¹⁷ *United States v. Rendon*, No. 19-10653, 2020 WL 1230310, at *1 (5th Cir. Mar. 12, 2020) (unpublished) (per curiam); see *United States v. Woods*, 793 F. App’x 340, 340–41 (5th Cir. 2020) (unpublished) (per curiam); *United States v. Carvajal*, 792 F. App’x 351, 352 (5th Cir. 2020) (unpublished) (per curiam); *United States v. Chandler*, 789 F. App’x 492, 493 (5th Cir. 2020) (unpublished) (per curiam). We further note that because Badgett pleaded true to the supervised-release violations, he could not satisfy the third prong of plain-error review—which requires a showing that the alleged error “affected the outcome of the district court proceedings”—much less the fourth, even if there were a clear error. *United States v. Mares*, 402 F.3d 511, 521 (5th Cir. 2005) (quoting *Olano*, 507 U.S. at 734).

¹⁸ *United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013).

¹⁹ *Id.* (internal quotation marks omitted) (quoting *United States v. Peltier*, 505 F.3d 389, 392 (5th Cir. 2007)).

²⁰ *United States v. Lopez-Velasquez*, 526 F.3d 804, 809 (5th Cir. 2008) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)). Badgett claims that his 48-month aggregate sentence is “more than four times the top of the advisory guideline range of 5–11 months.” Not so. Where the district court exercises its discretion to impose consecutive revocation sentences and each “sentence falls within the advisory range and is consistent with the Guidelines’ policy regarding consecutive sentences,” the aggregate sentence “is entitled to a presumption of reasonableness.” *United States v. Martinez*, 676 F. App’x 354, 355 (5th Cir. 2017) (unpublished) (per curiam); see *United States v. Candia*, 454 F.3d 468, 471 (5th Cir. 2006).

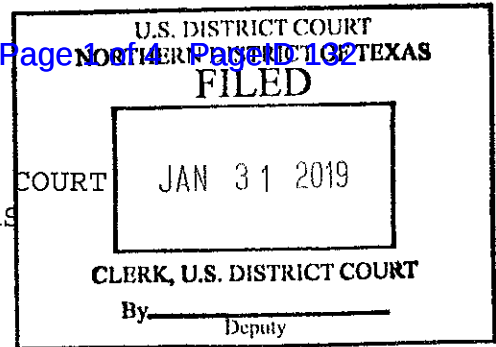
weighed the sentencing factors more favorably because his violation “essentially involved . . . living in the wilderness of Alaska, where he worked hard building cabins and structures and . . . did not commit any new offenses.” A defendant’s mere disagreement with the district court’s presumptively reasonable sentence “is not a sufficient ground for reversal.”²¹ Moreover, the record reflects that the district court carefully considered Badgett’s arguments for leniency, even putting aside its original intention “to sentence him to . . . a total of 72 months” after hearing of his efforts in Alaska.

IV.

For the foregoing reasons, the revocation of Badgett’s terms of supervised release and the revocation sentences imposed by the district court are affirmed.

²¹ *United States v. Malone*, 828 F.3d 331, 342 (5th Cir. 2016); *see also United States v. Hernandez*, 876 F.3d 161, 167 (5th Cir. 2017) (explaining that this Court will not “reweigh the sentencing factors and substitute our judgment for that of the district court”).

APPENDIX B



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

UNITED STATES OF AMERICA §
 § NO. 4:16-CR-100-A
VS. § NO. 4:16-CR-101-A
 § NO. 4:16-CR-102-A
JOHN CHRISTOPHER BADGETT §

JUDGMENT OF REVOCATION AND SENTENCE

Came on to be heard the motions filed by the government in the above-numbered cases on January 30, 2019, to revoke the terms of supervised release imposed on defendant, JOHN CHRISTOPHER BADGETT, on June 4, 2009, by the Honorable Edward J. Lodge, Judge of the United States District Court for the District of Idaho in three criminal actions that were combined for plea and sentencing purposes in cases on Judge Lodge's docket. Those cases had Case Nos. CR07-296-001-S-EJL (hereinafter the "296 Idaho Case"), CR08-279-001-S-EJL (hereinafter the "279 Idaho Case"), and CR09-20-001-S-EJL (hereinafter the "20 Idaho Case") in the District of Idaho. As reflected by the Judgment in a Criminal Case signed by Judge Lodge in those combined cases on June 16, 2009, defendant received sentences of imprisonment of 180 months as to six counts charging him with armed bank robbery, to run concurrently, and a term of supervised release of 5 years as to those six counts, to run concurrently.

On May 6, 2016, jurisdiction over those terms of supervised release was transferred to this court. The transfer of supervised release matters in the 296 Idaho Case was docketed in this court as Case No. 4:16-CR-100-A, the transfer of supervised release matters in the 279 Idaho Case was docketed in this court as Case No. 4:16-CR-101-A, and the transfer of supervised release matters in the 20 Idaho Case was docketed in this court as Case No. 4:16-CR-102-A. A separate, but identical, motion to revoke was filed by the government in each of those three cases on this court's docket. The hearing on those motions was combined as to those cases, and this Judgment of Revocation and Sentence is a combined judgment as to the three cases.

After having considered the grounds of the government's motions, the evidence, defendant's admissions, argument of counsel, and defendant's statement, the court has determined that such terms of supervised release imposed on defendant should be revoked and that defendant should be sentenced to a term of imprisonment of 8 months as to each of the six counts of conviction, to run consecutively to each other, for a total term of imprisonment to be served of 48 months.

The court finds and concludes that:

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

(b) The motions to revoke the terms of supervised release were 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 terms of supervised release described in such judgment signed by Judge Lodge on June 16, 2009, be, and are hereby, revoked; and

The court further ORDERS, ADJUDGES, and DECREES that defendant, be, and is hereby, committed to the custody of the

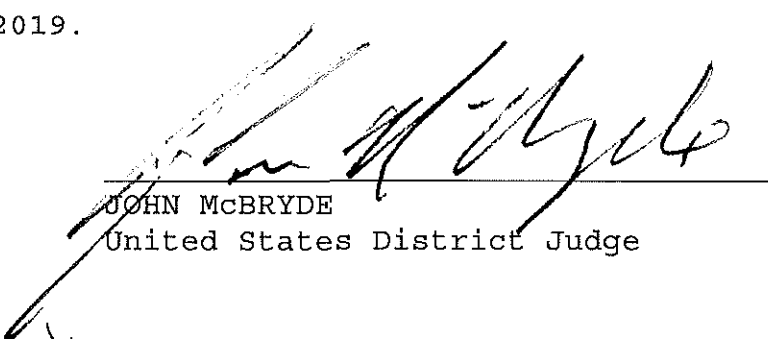
United States Bureau of Prisons to be imprisoned for a term of 8 months as to each count of the six counts of conviction, to run consecutively to each other, for a total term of imprisonment of 48 months.

The court further ORDERS, ADJUDGES, and DECREES that defendant shall remain liable for, and have an obligation to pay, the full unpaid balance of the \$37,806.05 restitution obligation imposed on him by such judgment signed by Judge Lodge on June 16, 2009.

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

The date of imposition of the sentence provided by this judgment is January 31, 2019.

SIGNED January 31, 2019.



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 C

UNITED STATES DISTRICT COURT

District of

Idaho

UNITED STATES OF AMERICA

V.

JOHN CHRISTOPHER BADGETT

JUDGMENT IN A CRIMINAL CASE

Case Number: CR07-296-001-S-EJL; CR08-279-001-S-EJL; CR09-20-001-S-EJL

USM Number: 18054-280

Thomas Monaghan

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 3, 5, 6, 7, CR07-296-001-S-EJL; Count 1 CR08-279-001-S-EJL; Count 1 CR09-020-001-S-EJL☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 § 2113(a) and (d)	Armed Bank Robbery CR07-296-001-S-EJL	10/22/2007	THREE
18 § 2113(a) and (d)	Armed Bank Robbery CR07-296-001-S-EJL	09/18/2007	FIVE
18 § 2113(a) and (d)	Armed Bank Robbery CR07-296-001-S-EJL	09/20/2007	SIX
18 § 2113(a) and (d)	Armed Bank Robbery CR07-296-001-S-EJL	10/02/2007	SEVEN
18 § 2113(a) and (d)	Armed Bank Robbery CR08-279-001-S-EJL	10/30/2007	ONE
18 § 2113(a) and (d)	Armed Bank Robbery CR09-020-001-S-EJL	10/15/2007	ONE

The defendant is sentenced as provided in pages 2 through 8 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) _____Count(s) 1, 2 & 4; CR07-296-001-S-EJL ☐ 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.

June 4, 2009

Date of Imposition of Judgment

Signature of Judge

Edward J. Lodge, United States District Judge

Name and Title of Judge

Date

6-16-09

DEFENDANT: JOHN CHRISTOPHER BADGETT
CASE NUMBER: CR07-296-001-S-EJL; CR08-279-001-S-EJL; CR09-020-001-S-EJL

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 108 months on all counts to run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:
Defendant participate in 500 hours of drug treatment

☒ 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: JOHN CHRISTOPHER BADGETT

CASE NUMBER: CR07-296-001-S-EJL; CR08-279-001-S-EJL; CR09-020-001-S-EJL

ADDITIONAL IMPRISONMENT TERMS

While incarcerated Defendant shall pay 10% gross or 50% of salary, whichever is the greater amount, towards the restitution balance.

DEFENDANT: JOHN CHRISTOPHER BADGETT
CASE NUMBER: CR07-296-001-S-EJL; CR08-279-001-S-EJL; CR09-020-001-S-EJL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: FIVE (5) YEARS to run concurrently.

Within 72 hours of release from custody or reentry to the United States during the court ordered term of supervision, the defendant shall report in person to the probation office in the district to which the defendant was released or allowed to reenter.

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

The defendant shall not unlawfully possess a controlled substance. 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 on supervision and to a maximum of five (5) periodic drug tests a month thereafter for the term of supervision as directed by the probation officer. Cost to be paid by the defendant and the government based upon the defendant's ability to pay.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any 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 and shall submit a truthful and complete written report within the first five days of each month;
- 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 of 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; and
- 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.

DEFENDANT: JOHN CHRISTOPHER BADGETT

CASE NUMBER: CR07-296-001-S-EJL; CR08-279-001-S-EJL; CR09-020-001-S-EJL

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall comply with the rules and regulations of the Probation Department.

The defendant shall participate in a program of drug/alcohol abuse treatment, including urinalysis testing, as directed by the probation officer. Cost of the treatment and testing to be paid by the defendant and the government based upon the defendant's ability to pay.

The defendant shall participate in a program of mental health treatment, as directed by the probation officer. Cost of the treatment and testing to be paid by the defendant and the government based upon the defendant's ability to pay.

The defendant shall submit to a search of his home, vehicle, and/or person upon demand of the probation officer, or a person duly authorized by the probation officer, without necessity of a warrant and shall submit to seizure of any contraband found therein.

The defendant shall, upon request of the probation officer, provide any and all financial information requested by the probation officer. A fine is waived due to defendant's ability to pay.

Defendant shall pay a fine in the amount of 0. The Court finds that the defendant does not have the ability to pay interest on the fine and waives the interest requirement.

Restitution is ordered in the amount of \$37,806.05 at a monthly rate to be established by the probation officer. Each monthly payment shall be made on or before a date established by the probation officer. The payment shall be made to the Clerk of the Court for the District of Idaho.

Pursuant to 18 USC §3013 defendant shall pay a Special Assessment of \$600

DEFENDANT: JOHN CHRISTOPHER BADGETT
CASE NUMBER: CR07-296-001-S-EJL; CR08-279-001-S-EJL; CR09-020-001-S-EJL
CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 600.00	\$ 0	\$ 37,806.05

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Wells Fargo Bank 1303 Addison Avenue East Twin Falls, ID 83301		6,500.00	
Wells Fargo Bank 210 East Corporate Drive Meridian, ID 83642		5,852.00	
Wells Fargo Bank 101 South Main Street Belen, NM 87002		1,345.00	
Pikes National Bank 2401 West Colorado Colorado Springs, CO 80904		7,106.05	

☐ 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 Sheet 6 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:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

DEFENDANT: JOHN CHRISTOPHER BADGETT
CASE NUMBER: CR07-296-001-S-EJL; CR08-279-001-S-EJL; CR09-020-001-S-EJL

ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Chase Bank 3755 Stockton Hill Rd. Kingman, AZ 84601		2,986.00	
American Security Bank 13792 Bear Valley Rd. Victorville, CA 92392		5,000.00	
Rock Springs National Bank P.O. Box 880 Rock Springs, WY 82902		1,300.00	
Zions Bank 460 N. Main Street Logan, UT 84321		5,560.00	
Wells Fargo Bank 1200 South Milton Rd. Flagstaff, AZ 8600		1,800.00	
Rite Stop 955 Northgate Mile Idaho Falls, ID 83402		207.00	
Diamond Shamrock Gas Station 11139 N. IH-35 Svc. Rd. Austin, TX 78753		150.00	
Tonopah Shell Station 459 Main Street Tonopah, NV 89049		unknown	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT:
CASE NUMBER:

SCHEDULE OF PAYMENTS

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

- A** ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
- All monetary penalties are due immediately or in monthly payments as directed by the probation officer based on the defendant's ability to pay.

The defendant shall submit nominal payments of not less than \$25 per quarter while incarcerated through the Inmate Financial Responsibility Program. The defendant shall pay any special assessment or other financial obligation that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release to the Clerk of the U.S. District Court, 550 W. Fort Street, MSC 039, Boise, Idaho, 83724. The defendant shall submit nominal and monthly payments of 10% of his gross income, but not less than \$25 per month, during the term of supervised release. This payment schedule will remain in effect unless further reviewed by the court. A review may take place at any time and will be based upon a change in the defendant's financial circumstances.

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

- ☐ Joint and Several
- 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 pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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