

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

NGOC HONG NGUYEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Christopher A. Curtis

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- Appendix A Judgment and Opinion of Fifth Circuit, CA No. 20-11122, dated June 22, 2021, *United States v. Ngoc Hong Nguyen*, 850 F. App'x 907 (5th Cir. June 22, 2021) (unpublished).
- Appendix B Judgment of Revocation and Sentence of the United States District Court for the Northern District of Texas, entered October 29, 2020. *United States v. Nguyen*, Dist. Court 4:08-CR-00119-Y-18.
- Appendix C Judgment and Sentence of the United States District Court For the Northern District of Texas entered April 14, 2009. *United States v. Nguyen*, Dist. Court 4:08-CR-00119-Y-18.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 20-11122
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 22, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

NGOC HONG NGUYEN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:08-CR-119-18

Before JOLLY, ELROD, and GRAVES, *Circuit Judges*.

J U D G M E N T

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

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

United States Court of Appeals for the Fifth Circuit

No. 20-11122
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 22, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

NGOC HONG NGUYEN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:08-CR-119-18

Before JOLLY, ELROD, and GRAVES, *Circuit Judges*.

PER CURIAM:*

Ngoc Hong Nguyen was sentenced to eight months of imprisonment and 26 months of supervised release after he pleaded true to violating the terms of his supervised release. On appeal, he challenges the constitutionality of 18 U.S.C. § 3583(g), which mandates revocation of

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-11122

supervised release and a term of imprisonment for any offender who violates certain conditions of supervised release, including possessing a controlled substance or refusing to comply with the drug-testing requirement.

Relying on *United States v. Haymond*, 139 S. Ct. 2369 (2019), Nguyen contends that § 3583(g) is unconstitutional because it requires revocation of a term of supervised release and imposition of a term of imprisonment without affording the defendant the constitutionally guaranteed right to a jury trial. He concedes that his challenge is foreclosed under *United States v. Garner*, 969 F.3d 550 (5th Cir. 2020), *as revised* (Aug. 14, 2020), *cert. denied*, 141 S. Ct. 1439 (2021), and raises the issue to preserve it for further review. The Government has filed an unopposed motion for summary affirmance and, alternatively, for an extension of time to file its brief.

In *Garner*, we rejected the argument that Nguyen has advanced and held that § 3583(g) is not unconstitutional under *Haymond*. *See Garner*, 969 F.3d at 551-53. Thus, Nguyen's sole argument on appeal is foreclosed. Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for extension of time is DENIED AS MOOT, and the judgment of the district court is AFFIRMED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

APPENDIX B

United States District Court

Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

v.

NGOC HONG NGUYEN

**JUDGMENT IN A CRIMINAL CASE
for revocation of supervised release**

Case number: 4:08-CR-119-Y (18)
Nancy Larson, assistant U.S. attorney
Loui Itoh, attorney for the defendant

On October 27, 2020, a hearing was held, at which time the Court determined that the defendant, Ngoc Hong Nguyen, had violated his conditions of supervised release. Accordingly, the defendant is adjudged guilty of such violations, which involve the following conditions:

CONDITION	NATURE OF VIOLATION	VIOLATION CONCLUDED
Mandatory condition	Failing to submit urine specimens at Detection & Treatment Resources, Inc.	December 2019; January and February 2020
Standard condition no. 2 and standard condition no. 6	Failing to report as requested by supervising probation officer	February 2020

The defendant is sentenced as provided in pages one through two of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Sentence imposed October 27, 2020.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed October 29, 2020.

IMPRISONMENT

The defendant, Ngoc Hong Nguyen, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 8 months, pursuant to USSG § 7B1.4(a), p.s.

The Court recommends that the defendant be incarcerated at a facility as close to Stanton, California, as possible.

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 26 months upon the same conditions as were imposed by this Court on April 13, 2009, in this case, case no. 4:08-CR-119-Y (18).

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

APPENDIX C

United States District Court

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

NGOC HONG NGUYEN

Case number: 4:08-CR-119-Y (18)

U.S. marshal's no.: 48104-112

Joshua Burgess, assistant U.S. attorney

Roderick C. White, attorney for the defendant

On December 31, 2008, the defendant, Ngoc Hong Nguyen, entered a plea of guilty to count two of the two-count third superseding indictment filed on October 22, 2008. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

TITLE & SECTION	NATURE OF OFFENSE	OFFENSE CONCLUDED	COUNT
21 U.S.C. §§ 846 & 841(a)(1) & (b)(1)(C)	Conspiracy to Possess With Intent to Distribute a Controlled Substance, a Class C felony	May 29, 2008	Two

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

All remaining counts are dismissed as to this defendant only upon motion of the government.

The defendant shall pay immediately a special assessment of \$100 for count two of the two-count third superseding 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 April 13, 2009



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed April 14, 2009

IMPRISONMENT

The defendant, Ngoc Hong Nguyen, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 151 months on count two of the two-count third superseding indictment.

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 two of the two-count third superseding indictment.

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 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, 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 as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (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;

report in person to the probation office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within seventy-two (72) hours of release or entry;

participate in workforce development programs and services involving activities relating to occupational and career development including, but not limited to, assessments and testing, educational instruction, training classes, career guidance, counseling, case management, and job search and retention services, as directed by the probation officer until successfully discharged from the program;

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;

notify the probation officer at least ten days prior to any change of residence, standard condition no. 6 being applicable only to changes in employment; and

not illegally reenter the United States if deported or allowed voluntary departure.

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.

FORFEITURE

The Court further ORDERS that defendant forfeit to the United States of America, in accordance with 21 U.S.C. § 853(a) and Rule 32.2(b)(3), a sum of money equal to \$12,450,000 in United States currency, representing the amount of the proceeds obtained as a result of the offense, for which the defendant is jointly and severally liable.

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