No. 22-_____

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY HYLTON,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit

# PETITION FOR A WRIT OF CERTIORARI

LISA A. RASMUSSEN
*Counsel of Record*
THE LAW OFFICES OF KRISTINA
WILDEVELD & ASSOCIATES
550 E. Charleston Blvd., Suite A
Las Vegas, Nevada 89104
Tel: (702)222-0007
Fax: (702)222-0001
E-Mail: lisa@veldlaw.com

*Counsel for Petitioner*

## I. QUESTIONS PRESENTED

A. Does This Court's Decision in *Rodriguez v. United States* permit any criminal history inquiry at any traffic stop no matter how long the inquiry takes?

B. Does *Rodriguez v. United States* require a case by case analysis as to whether a traffic stop may be prolonged beyond its initial purpose in order to perform an extensive criminal history investigation?

## II. TABLE OF CONTENTS

## III. TABLE OF AUTHORITIES

### Constitutional Provisions



### Cases

**Statutes**

## IV. PETITION FOR WRIT OF CERTIORARI

Petitioner Anthony Hylton petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

## V. OPINIONS BELOW

The published opinion of the Ninth Circuit Court of Appeals denying Mr. Hylton's direct appeal is located at *United States v. Hylton*, 30 F.4th 842 (9th Cir. 2022), which is attached at Appendix ("App.") 1. The Ninth Circuit's denial of rehearing and/or rehearing en banc is attached at App. 2.

## VI. JURISDICTION

Mr. Hylton's direct appeal was denied on April 5, 2022. Rehearing/Rehearing En Banc was denied on July 1, 2022. Mr. Hylton invokes this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for a writ of certiorari within ninety days of the Ninth Circuit Court of Appeals' order denying the Petition for Panel and En Banc Rehearing. SCR 13(3).

## VII. CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

. . .

. . .

. . .

## VIII. STATEMENT OF THE CASE

This petition presents an issue that is contrary to this Court's existing precedent, it presents an issue that is contrary to the Ninth Circuit's prior authority and it presents a split of circuit court authority.

### 1. Overview

Anthony Hylton, fell asleep at an intersection in Las Vegas prompting law enforcement to respond to his location in the early morning hours of December 5, 2016. Responding officers Childers and Hinkel stated that they smelled marijuana and when the driver awoke he appeared to be confused and he had ibuprofen tablets stuck to his sweatshirt. Childers suspected the driver was under the influence and performed standard field sobriety tests (SFSTs) and Childers also requested a drug recognition expert (DRE) to determine whether the driver was under the influence of narcotics.

While Childers was performing the SFSTs, Hinkel entered Mr. Hylton's vehicle, without consent, to obtain Mr. Hylton's identification. Hinkel later claimed that the odor of marijuana gave him probable cause to search the vehicle. During his search of the vehicle, Hinkel located a black case, which he opened because he "knew those are for firearms." Hinkel found a .45 caliber firearm in the case and he removed it from the vehicle and placed it in the patrol vehicle for safekeeping. No marijuana was found in the car. Hinkel ran a check to see if the gun was stolen and the result was negative.

Ultimately, Childers called off the DRE and entered into his computer aided dispatch report (CAD Report) that Mr. Hylton exhibited zero clues of impairment on the horizontal gaze nystagmus test. He also testified later that he did not believe that Mr. Hylton was impaired, agreeing that he told Mr. Hylton "you don't seem impaired." Hinkel also agreed that Mr. Hylton did not display signs of impairment and that he answered questions appropriately. Neither officer believed that Mr. Hylton's possession of a firearm was abnormal.

The officers then ran a SCOPE (Nevada criminal warrant check) to determine whether Mr. Hylton had any outstanding warrants and they then ran a Triple I deep criminal history check. These checks occurred forty minutes after the initial traffic stop had commenced and twenty minutes after the completion of the SFST's and the determination that Mr. Hylton was not impaired. Upon running the Triple I check, it was discovered that Mr. Hylton had a prior felony conviction and at that point he was arrested for being an ex-felon in possession of a firearm.

The firearm taken into evidence at Mr. Hylton's traffic stop was later compared using ballistics tests to a bank robbery where a bullet was fired from a similar weapon and the ballistics test determined the weapon to be a match. Mr. Hylton was later indicted in federal court for two counts of armed bank robbery in violation of 18 U.S.C. §2113(a) and (d), two counts of use and carry of a firearm during and in relation to a crime of violence in violation of 18 U.S.C. §924(c)(1)(A)(ii) and felon in possession of a firearm in violation of 18 U.S.C. §922(g)(1) and 924(a)(2).

After substantial pretrial litigation, Mr. Hylton's requests to suppress the weapon were denied and his case proceeded to trial where he was convicted on four counts representing the two armed robbery counts and the two use and carrying of a firearm during and in relation to a crime of violence. He later pled guilty to the felon in possession charge, which had been bifurcated. Mr. Hylton was sentenced to a total term of 282 months in the bureau of prisons.

A key focus of the pretrial suppression litigation was the timing of the criminal history check, the credibility of the officers and when the mission of the traffic stop concluded. Mr. Hylton argued that because the Triple I check did not occur until after the stop was unreasonably prolonged, both the criminal history results and the firearm should have been suppressed. Although the magistrate judge did not find Childers' testimony to be credible, and she ruled that the mission of the traffic stop ended after the officers determined non-impairment after the SFSTs, she suppressed only Mr. Hylton's statements made to the officers following the unreasonable prolongation and she did not suppress the firearm.

2. The Ninth Circuit's Decision on Direct Appeal

On direct appeal, Mr. Hylton argued that the traffic stop was unreasonable prolonged resulting in a Fourth Amendment violation contrary to both *Rodriguez v. United States*, 575 U.S. 348 (2015) and *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015) and that as a result both the firearm and the Triple I check results should have been suppressed.

The Panel of the Ninth Circuit Court of Appeals concluded its published opinion with the following:

> Having rejected Hylton's *Evans* argument, we join our sister circuits and hold that because a criminal history check "stems from the mission of the stop itself," it is a "negligently burdensome precaution []" necessary "to complete [the stop] safely." [citation omitted]. The officers did not need independent reasonable suspicion to perform the criminal history check.

*Hylton*, 30 F.4th at 848.

Not all sister circuits agree with the rule espoused in *Hylton*. The circuit split is addressed below. The *Hylton* opinion seems to center on "officer safety," yet officer safety was not one of the constellation of issues present in Mr. Hylton's case. The opinion references a portion of this Court's decision in *Rodriguez*, but does so out of context in a manner that degrades and distorts *Rodriguez*. The *Hylton* opinion then concludes that given this Court's "reliance on this principal [officer safety] it is unsurprising that several other circuits have held that criminal history checks are permissible post-*Rodriguez*. Again, these concepts are not entirely accurate, nor is the Ninth Circuit's understanding or application of *Rodriguez*, which does not authorize any criminal history search at any traffic stop, no matter how long it takes without a basis for a criminal history search. *Rodriguez* simply does not authorize that and it does not say that.

The Ninth Circuit summarily denied rehearing and/or rehearing en banc.

. . .

. . .

## IX. REASONS FOR GRANTING THE WRIT

A traffic stop is a seizure within meaning of the Fourth Amendment, and authority for the stop "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). The purpose of a traffic stop is traffic safety. Traffic stops are not intended as a pretextual mechanism to determine if criminal activity might be occurring. In fact, such pretextual stops are prohibited by the Fourth Amendment and a traffic stop is subject to the constitutional imperative that it not be "unreasonable" under the circumstances. *Whren v. United States*, 517 U.S. 806 (1996), *Delaware v. Prouse*, 440 U.S. 648 (1979).

The Ninth Circuit's opinion in *United States v. Hylton*, 30 F.4th 842 (9th Cir. 2022) eschews the protections annunciated by this Court in *Rodriguez v. United States*, it completely ignored established Ninth Circuit precedent in *United States v. Evans* and it contributes to a circuit split among sister circuits.

The Ninth Circuit's panel opinion acknowledges that *Rodriguez v. United States* held that a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of' the stop and that the tolerable duration of inquiries in the traffic-stop context is determined by the mission, which is to address the traffic violation that warrant to the stop and to attend to related safety concerns. *United States v. Hylton*, 40 F.3d at 847. It then goes on to point out that the Supreme Court cited favorably to *United States v. Holt*, 264 F.3d 1215 (10th

Cir. 2001) which recognized that "officer safety justifies criminal record and outstanding warrant checks. *Id,* citing to *Rodriguez* and *Holt.*

The opinion then opines that this Court relied on this principal and finds it unsurprising that a number of other circuits have held that criminal history checks are admissible post-*Rodriguez. Hylton,* at 847. The opinion references *United States v. Salkil,* 10 F.4th 897, 898 (8th Cir 2021) ("During a stop, officers may complete routine tasks, such as computerized checks of the driver's license and criminal history, and the writing up of a warning."); *United States v. Palmer,* 820 F.3d 640, 651 (4th Cir. 2016) ("A police officer is entitled to inquire into a motorist's criminal record after initiating a traffic stop"); *United States v. Sanford,* 806 F.3d 954, 956 (7th Cir. 2015) ("a criminal history check is "a procedure permissible even without reasonable suspicion- indeed a procedure in itself normally reasonable, as it takes little time and may reveal outstanding arrest warrants"); *United States v. Mayville,* 955 F.3d 825, 830 (10th Cir. 2020) ("An officer's decision to run a criminal history check on an occupant of a vehicle after initiating a traffic stop is justifiable as a 'negligibly burdensome precaution' consistent with the important governmental interest of officer safety."); and *United States v. Dion,* 859 F.3d 114, 127 n.11 (1st Cir. 2017).[1] *See Hylton,* at 847.

The opinion eschews the notion that it was bound by *United States v. Evans,* apparently hoping to make some distinction about what other Circuits have done post-*Rodriguez,* but *Evans* is post-*Rodriguez. Evans* was filed in May 2015;

[1] *Dion* is not on point to the facts presented in this case or the other similar cases discussed throughout.

*Rodriguez* was filed in April 2015. *Evans* cited to *Rodriguez* and recognized *Rodriguez* as binding authority in its opinion. The opinion does acknowledge that in *Evans*, there are two other Circuits who noted that a criminal history check is unlawful, but the panel discards those circuit opinions as irrelevant because they "preceded Rodriguez, which "recogniz[ed] [the] officer safety justification for criminal record . . . checks." *Hylton* at 848.

### A.
### An Ordinary Records Check is Not the Same as a National Criminal History Search Through NCIC's Triple I Database

The *Hylton* opinion does not distinguish the criminal history search that occurred in this case (a Triple I check) from what it, and most other cases, characterize as an ordinary warrant and license check. In Nevada, the SCOPE search *is* the ordinary warrants and driver's license search. SCOPE is Nevada's statewide database that will, in quick time, let an officer know if the driver has a valid driver's license and whether there are outstanding warrants. While SCOPE records can contain criminal history information, discerning that would require reading through pages of transcripts and looking for outcomes of cases that are not always updated or accurate in SCOPE. The SCOPE check was the ordinary part of the traffic stop. But in Mr. Hylton's case, the officers then decided to run a "Triple I" search. "Triple I" is the Interstate Identification Index. It is maintained by the FBI at the National Crime Information Center (NCIC). It includes information not only on convictions, but information on those who have been arrested or indicted for a "serious criminal offense" anywhere in the country. It is a deep dive into one's

criminal history and it is not a check done at ordinary traffic stops. In Mr. Hylton's case, it is the Triple I check that yields the results of his felony conviction. All of this occurred after the purpose of the traffic stop had concluded when officers (1) determined that he was not impaired and (2) determined that he had a valid license and that he had no outstanding warrants. Mr. Hylton's traffic stop concluded at that moment. This is the case under both *Evans* and *Rodriguez*. No officer articulated any reasonable suspicion that would have necessitated a deep dive into Mr. Hylton's criminal history.

B.

**This Court's Decision in *Rodriguez v. United States* Does Not Support the Ninth Circuit's Opinion in *Hylton* and *Hylton* is Contrary to This Court's Established Precedent**

The panel opinion endorses a categorical carte blanche rule that any criminal history inquiry at any traffic stop is valid because (a) officer safety and (b) *Rodriguez* supports it. But the constitutionality of a criminal records check was not at issue in *Rodriguez*, which did not even consider, much less adopt the rule established by the *Hylton* opinion. The opinion in *Rodriguez* actually forecloses such a categorical, carte blanche rule.

*Rodriguez* distinguished between two types of measures in the traffic-stop context: (1) those ordinary inquiries" that are "authorized incident to every traffic stop;" and (2) those measures that an officer "may need" to conduct "in order to complete his mission safely." *Rodriguez*, 575 U.S. at 355-56. The first, always permitted category includes "checking the driver's license, determining whether

there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* at 355. All these measures are squarely within the mission of a traffic stop and no one disagrees on this point. This list omits criminal background checks, indicating that such checks for historical criminal history are not authorized at every traffic stop. See *United States v. Palmer*, 820 F.3d at 655 (Wynn, J., concurring).

Instead, criminal history background checks fall within the second category of measures that may or may not be permissible depending on whether they are appropriate in the circumstances to address concerns about officer safety. The rule adopted in the panel's opinion collapses that distinction and asserts that "officer safety" is the reason, rather than requiring a showing that officer safety required further inquiry.

*Rodriguez* states that a traffic stop prolonged beyond "the amount of time reasonably required to complete the stop's mission" is unlawful. *Rodriguez* at 357. Where law enforcement conducts a criminal records check that is not actually related to officer safety, the stop has been prolonged unreasonably in violation of the Fourth Amendment. *Rodriguez* does not support the *Hylton* opinion; the *Hylton* opinion contradicts *Rodriguez.*

. . .

. . .

. . .

. . .

C.

## The Ninth Circuit's Opinion In *Hylton* Is Contrary to its Prior Holding In *United States v. Evans* and The Purported Basis for Overruling *Evans* Is Constitutionally Infirm

In *United States v. Evans*, a Washoe County Nevada DEA task force officer had been investigating Evans for drug trafficking based on various leads from informants. *Evans*, 786 F.3d 779, 781. (9th Cir. 2015). After getting a court authorized order for cell phone pings on Evans phone, the task force officer learned that Evans was in Sacramento and was told that Evans would be heading back to Nevada with drugs. The task force officer enlisted the assistance of a canine certified Washoe County Sheriff to intercept Evans as he returned to Nevada. *Id.* at 781-82.

After waiting 11 hours for Evans to enter Nevada, Evans was pulled over by the canine deputy. The deputy took Evans information early into the traffic stop and the license verification and warrants check came back clear seven minutes later. Per this Court's opinion in Evans, this is where the lawful task attendant to the traffic stop concluded. However, the traffic stop did not conclude because while he was waiting for the "ordinary" records check to clear, Evans told the deputy that he had been arrested previously and that he had a conviction. This caused the deputy to further (and unlawfully) prolong the stop by running an additional criminal history check and then a felon registration check to see if he was properly registered as a felon at the address listed on his driver's license. The deputy later further prolonged

the stop by conducting a canine sniff of Evans' vehicle, which ultimately led to locating drugs and Evans' arrest. Id. 783-785.

In *Evans* the Ninth Circuit concluded that the mission of the traffic stop concluded when the officer received the information that he had a valid license and no outstanding warrant. *Evans* noted that *Rodriguez* squarely controls and that the secondary felon registration check doubled the length of time and that the canine sniff process further prolonged the stop, both of which were unlawful because both lacked reasonable suspicion to do anything more than complete the traffic stop. *Id* at 786-788. *Evans* controls in Hylton's case for the reasons explained in subsection A. *Evans* is a post-*Rodriguez* case, though the *Hylton* opinion incorrectly states that it is pre-*Rodriguez.*

## D.
## The Ninth Circuit Opinion in Hylton Deepens a Circuit Split Regarding What Criminal History Check is Tolerable at a Traffic Stop

### 1. Circuit Opinions That Conflict with the Ninth Circuit's Opinion in *Hylton* but Mirror the Ninth Circuit's Prior Precedent in *Evans*

The following circuit court opinions now conflict with *Hylton* but mirror the Ninth Circuit's prior precedent in *United States v. Evans.* These circuits conclude, consistent with *Rodriguez* that the prolongation of a traffic stop for more than a basic license, insurance and registration check should be determined on a case by case basis.

. . .

**First Circuit Court of Appeals.** *United States v. Henderson*, 463 F.3d 27 (1st Cir. 2006).

In *United States v. Henderson*, the First Circuit held that a traffic stop prolonged by 20 minutes to run a criminal history check on a passenger who was allegedly not wearing a seatbelt unlawfully prolonged the purpose of the traffic stop and there was no officer safety purpose articulated for extending the stop or running the passenger's criminal history.

**Third Circuit Court of Appeals.** *United States v. Clark*, 904 F.3d 404, 410 (3rd Cir. 2018).

In *United States v. Clark*, the Third Circuit determined that the stop was lawfully concluded once the driver's authority to drive the vehicle was established (by an ordinary records check) and that further inquiries of the passenger (Clark) were unlawful because they were unrelated to the purpose of the traffic stop. That Circuit quoted *Rodriguez*, 135 S.Ct. 1609 (2015):

> Not all inquiries during a traffic stop qualify as ordinarily incident to the stop's mission. In particular, those "measure[s] aimed at detect[ing] evidence of ordinary criminal wrongdoing" do not pass muster. *Id.* at 1615 (quotation mark omitted) (second alteration in original). "On-scene investigation into other crimes . . . detours from th[e] mission," as do "safety precautions taken . . . to facilitate such detours." *Id.* at 1616. This is because "the Government's endeavor to detect crime in general or drug trafficking in particular" is different in kind than roadway and officer safety interests. *Id.*

*United States v. Clark,* 902 F.3d 404, 410 (3d Cir. 2018)

**11th Circuit Court of Appeals.** *United States v. Purcell*, 236 F.3d 1274, 1278-1279 (11th Cir. 2001) and *United States v. Boyce,* 351 F.3d 1102 (11th Cir. 2003).

In *United States v. Purcell*, the Eleventh Circuit adopted a case-by-case approach. It expressly rejected a carte blanche rule permitting criminal records checks as part of every traffic stop. Although it upheld the convictions, it declined to adopt the rule the panel wants to impose on this Circuit. It noted that "[A]s in most issues relating to the constitutionality of a traffic stop," bright line rules are inadvisable and the touchstone of the Fourth Amendment is always reasonableness. "[U]nder some circumstances a criminal record request might lengthen a traffic stop beyond what is reasonable." *Id*, at 1279. Although this case predates *Rodriguez* by 14 years, its holding is consistent with *Rodriguez.*

In *United States v. Boyce*, 351 F.3d 1102 (11th Cir. 2003), Boyce was pulled over for driving ten miles under the speed limit on a highway. *Id.* at 1104. He provided his driver's license and rental car agreement and stated he was probably tired as he had been driving for over 13 hours. *Id.* Officers wrote Boyce a warning, but then decided to call a drug dog and later to perform a criminal history search. The Eleventh Circuit determined that once the officer had completed writing the warning citation the traffic violation was complete and the original traffic stop could not be prolonged absent a reasonable and articulable suspicion of some other criminal wrongdoing. *Id.* at 1107.

> While we recognize that drug trafficking is a serious problem in this country and we encourage law enforcement agencies to use every available means to control it, we cannot condone methods that offend the protections afforded by the Constitution. The detention of Jody Boyce extended beyond the time necessary to process the traffic violation for which he was stopped and Officer Edwards did not have the reasonable suspicion to justify such a detention. Accordingly, the detention and the search were unreasonable under the Fourth Amendment.

*Id.* at 1111. *Boyce* redates *Rodriguez* by 12 years, yet its holding is consistent with *Rodriguez.*

### 2. Circuit Decisions That Tend to Support the *Hylton* Opinion

These circuit opinions tend to support the *Hylton* opinion, but they do not present identical or similar circumstances, though one opinion does also involve a Triple I criminal history check.

**Fourth Circuit Court of Appeals.** *United States v. Palmer*, 820 F.3d 640, 651 (4th Cir. 2016).

In *United States v. Palmer,* the Fourth Circuit held that A "police officer is entitled to inquire into a motorist's criminal record after initiating a traffic stop" and need not show the criminal records check had anything to do with officer safety." *Id.* The officers in this case used two databases, neither of which were Triple I. In this case, officers stopped Palmer because his window tint was too dark. Eleven minutes into the stop, officers ran vehicle information and learned that the vehicle was registered to a woman who was not present. *Id.* at 644-645. Officers also learned

from the first database that Palmer had potential gang affiliation and then conducted a secondary criminal history search in a different database, LInX. *Id.* at 645.

**Seventh Circuit Court of Appeals.** *United States v. Simon*, 937 F.3d 820 (7th Cir. 2019) and *United States v. Sanford,* 806 F.3d 954 (7th Cir. 2015).

In *United States v. Simon,* the Seventh Circuit held that when police conduct a stop, "they are entitled to demand the driver's identification, of course, and it is routine to check the driver's record for active warrants, driving history, and criminal history. Those checks are done for important reasons, including officer safety." *Simon,* 937 F.3d at 833.

In *United States v. Sanford*, the trooper who pulled over the speeding car learned that it was rented 12 hours earlier to neither occupant. The Seventh Circuit determined that "The trooper checked the occupants' criminal histories on the computer in his car—a procedure permissible even without reasonable suspicion ... " and "a criminal history check is a procedure permissible even without reasonable suspicion· indeed a procedure in itself normally reasonable, as it takes little time and may reveal outstanding arrest warrants." *Sanford*, 806 F.3d at 956. In *Sanford*, the Eleventh Circuit distinguishes the facts of its case from *Rodriguez* stating that reasonable suspicion was present in *Sanford*, but not in *Rodriguez. Id.* at 959.

**Eighth Circuit Court of Appeals.** *United States v. Salkil,* 10 F.4th 897 (8th Cir 2021) and *United States v. Englehart*, 811 F.3d 1034 (8th Cir. 2016).

In *United States v. Salkil,* Salkil was stopped because his rear license plate was not properly illuminated per Iowa law. *Id. at 898.* The Circuit states that during

a stop, officers may complete "routine tasks" such as "computerized checks of the driver's license and criminal history and the writing up of a warning." *Id.* citing to *United States v. Englehart.*

In *United States v. Englehart,* also a post-*Rodriguez* case, the Eighth Circuit states that after a traffic stop is initiated, the officer may detain the motorist while he completes "a number of routine but somewhat time-consuming tasks related to the traffic violation," and these tasks may include "computerized checks of the vehicle's registration, and the driver's license and criminal history." *Englehart,* 811 F.3d at 1040. However, *Englehart* cites to *United States v. Barragan,* 379 F.3d, 524, 528 (8th Cir. 2005) for this proposition and *Barragan* is clearly a pre-*Rodriguez* case. None of these Eighth Circuit cases specify what type of criminal history check was performed. The Ninth Circuit's reliance on *Salkil* as an example of what sister circuits all agree on is weak, at best because Salkil is a regurgitation of pre-*Rodriguez* standards in that Circuit.

**Tenth Circuit Court of Appeals.** *United States v. Mayville,* 955 F.3d 825 (10th Cir. 2020).

In *United States v. Mayville,* the Tenth Circuit held:

> The Supreme Court's decision in *Rodriguez* constrains what law enforcement officers may do during a routine traffic stop in the absence of additional reasonable suspicion. But *Rodriguez* does not require courts to second-guess the logistical decisions of officers so long as their actions were reasonable and diligently completed within the confines of a lawful traffic stop.

*Mayville*, 955 F.3d at 827. *Mayville* did involve a Triple I criminal history check, so it is most similar to *Hylton*, but the facts are different and the argument there was whether running the Triple I check through dispatch rather than on the computer in the officer's car, the additional time it took to do this, and whether a drug dog alert 19 minutes into the traffic stop was based on an unlawful prolongation of the stop. *Id.* at 831-821.

There is a Circuit split on the issue of whether any criminal history check at any traffic stop is permissible and the Ninth Circuit is not simply "joining" sister circuits. The Ninth Circuit has departed the case-by-case analysis Circuits in favor of a rule never permitted by *Rodriguez* – that any deep dive criminal history check through NCIC's Triple I database is permissible regardless of whether it is related to traffic safety, the only purpose of a traffic stop.

## X. CONCLUSION

For the foregoing reasons, Mr. Hylton respectfully requests that this Court issue a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals.

The danger presented by the Ninth Circuit's opinion in *Hylton* ought to be plain. *Hylton* gives the freedom to conduct any criminal history check at any traffic stop regardless of how long it takes. It ignores the carefully constructed directive of this Court's opinion in *Rodriguez* and provides no Fourth Amendment protection in the context of an event that always implicates the Fourth Amendment- a traffic stop. The opinion in *Hylton* ignores even the most basic of concepts which is that it a

criminal history is irrelevant to driving, or traffic safety, unless the person is not authorized to drive. Authorization to drive is the appropriate inquiry, not whether one has prior convictions be they misdemeanors or felonies.

The Ninth Circuit's opinion in Hylton is contrary to this Court's established precedent in *Rodriguez* and it takes creates or adds to a split among the Circuits. A case by case approach is appropriate, as previously set forth by the Ninth Circuit in *Evans* and the *Hylton* opinion improperly assumed that *Evans* was a pre-*Rodriguez* case when it was not.

Dated this 29th day of September, 2022.

Respectfully submitted,

**LISA A. RASMUSSEN**
*Counsel of Record*
THE LAW OFFICES OF KRISTINA WILDEVELD & ASSOCIATES
550 E. Charleston Blvd., Suite A
Las Vegas, Nevada 89104
Tel: (702)222-0007
Fax: (702)222-0001
E-Mail: lisa@veldlaw.com

*Counsel for Petitioner*

## XI. APPENDIX

APPENDIX A: *United States v. Hylton,* 30 F.3d 842 (9th Cir. 2022) Opinion

APPENDIX B: *United States v. Hylton*, No. 2:17-CR-00086 HDM-NJK, District of Nevada (January 21, 2021), Judgment in a Criminal Case

APPENDIX C: *United States v. Hylton*, No. 21-10026 (July 1, 2022), Order denying rehearing

# APPENDIX A

**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>*Plaintiff-Appellee*,<br><br>v.<br><br>ANTHONY DELANO HYLTON, JR.,<br>*Defendant-Appellant.* | No. 21-10026<br><br>D.C. No.<br>2:17-cr-00086-<br>HDM-NJK-1<br><br>OPINION |

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Argued and Submitted January 11, 2022
San Francisco, California

Filed April 5, 2022

Before: Ronald M. Gould, Mark J. Bennett, and
Ryan D. Nelson, Circuit Judges.

Opinion by Judge R. Nelson

## SUMMARY*

### Criminal Law

In a case in which the defendant was convicted on two counts of armed bank robbery and two counts of using a firearm during a crime of violence, the panel affirmed the district court's orders denying (1) a motion to suppress evidence of a gun found in the defendant's vehicle during a traffic stop, (2) a motion for judgment of acquittal, and (3) a motion to dismiss the firearm counts.

Affirming the denial of the suppression motion in which the defendant argued that officers unreasonably prolonged the traffic stop, the panel held that a criminal history check is a negligibly burdensome precaution required for officer safety, and the officers thus did not need independent reasonable suspicion to perform the criminal history check. The panel held, alternatively, that even if the criminal history check had unreasonably extended the traffic stop, the district court's application of the inevitable discovery doctrine was not clearly erroneous.

Affirming the denial of the motion for judgment of acquittal, the panel concluded that a rational jury could have found that the defendant committed both bank robberies.

Affirming the denial of the motion to dismiss the counts charging use of a firearm during a crime of violence under 18 U.S.C. § 924(c), the panel wrote that it is bound by circuit

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

precedent holding that armed bank robbery is a crime of violence.

## COUNSEL

Lisa A. Rasmussen (argued), Law Offices of Kristina Wildveld and Associates, Las Vegas, Nevada, for Defendant-Appellant.

Elizabeth Olson White (argued), Appellate Chief; Christopher Chiou, Acting United States Attorney; United States Attorney's Office, Las Vegas, Nevada; for Plaintiff-Appellee.

## OPINION

R. NELSON, Circuit Judge:

Anthony Hylton was convicted of two armed robberies of the same bank. Between the two robberies, the gun used in the first robbery was found in his vehicle during a traffic stop. Hylton argues that the district court erred in denying his motion to suppress the evidence of the gun. He also challenges the sufficiency of the evidence and that armed bank robbery is not a crime of violence under 18 U.S.C. § 924(c). We affirm the district court's orders.

### I

This case involves two bank robberies at the same bank, with a challenged search, seizure, and arrest in between. In October 2016, a masked man wearing dark clothing, sunglasses, and gloves robbed a bank in Henderson, Nevada. He brandished a black handgun with brown grips. During

the robbery, he ejected an unexpended round onto the bank floor before he jumped over the counter to the teller's side, discharged a round into the floor next to the teller, and ordered the teller to give him all the money in the drawers. He stole almost $70,000 before escaping in a black midsized SUV that looked like a Ford Escape. Witnesses described him as a black male between the ages of 25 and 30, between five feet ten inches and six feet five inches, and between 175 and 250 pounds.

In December 2016, police received a call that a vehicle was stopped in the middle of one of the busiest intersections in Las Vegas. Around 6:13 a.m., police responded and found Hylton non-responsive at the wheel of the vehicle. The officers smelled marijuana coming from the car.

The officers knocked on the window and were eventually able to wake Hylton. He appeared to be disoriented and confused, with pills stuck to his sweatshirt. The officers originally thought Hylton was under the influence of some type of drug, possibly marijuana. The police instructed Hylton to exit the vehicle with his license and registration. Hylton got out of the car without his license or registration and told the officers these documents were in the backseat. Officer Hinkel could not locate the license and registration in the backseat but did find, in plain sight, a closed gun case with a gun inside. Hinkel placed the gun in the patrol car. A check to see if the gun was stolen came back negative. He then returned to the car to look for the license and registration in the front seat and only found crushed pills and a half empty bottle of alcohol.

Officer Childers began conducting field sobriety tests, which was standard police practice under the circumstances. Hylton failed two of the three field sobriety tests. The officers then contacted their sergeant for advice since they

were uncertain if Hylton was impaired. They decided to request a drug recognition expert ("DRE") to the scene, which is standard policy when the officers determine the sobriety tests are inconclusive.

Around 6:41 a.m., while waiting for the DRE to arrive, the officers once again asked Hylton for his identification, driver's license, and registration. Hylton claimed these documents were in the vehicle, but again, the officers could not locate them. The officers then asked for Hylton's name and date of birth. They used this information to perform a check on his driver's license, registration, insurance, open warrants, and criminal history. Two minutes after the other information came through, the criminal history check came back, showing that Hylton was a felon. At 6:49 a.m., the officers arrested Hylton for being a felon in possession of a firearm and canceled the call for the DRE, who was still on his way to the scene.

The gun confiscated from Hylton was a black handgun with brown wooden handle grips, just like the gun that was used in the bank robbery. The ballistics from this gun matched the ballistics from the round fired by the robber in the October robbery. After being charged and having the gun seized, Hylton was released.

In January 2017, the same Citibank branch was robbed by seemingly the same robber, brandishing what looked like a silver revolver. The robber took almost $18,000 during this robbery and escaped in a black Ford Escape.

Investigators used this information to search for similar Ford Escapes registered to addresses associated with black males in counties near the bank. This search yielded three matches, with one of the vehicles being registered to Hylton's girlfriend. She told investigators that Hylton was

the only man with access to her car. After executing a search warrant at both Hylton and his girlfriend's residences, Hylton was arrested for bank robbery. Hylton was indicted on five charges: two counts of bank robbery for the October 2016 and January 2017 robberies; two counts of a use of a firearm during and in relation to the crimes of violence of the bank robberies; and one count of felon in possession of a firearm.

Early in the case, Hylton moved to suppress the evidence resulting from the traffic stop, including the seized firearm. This motion was litigated heavily. In the end, the district court denied the motion, holding that the officers did not unreasonably prolong the traffic stop, and even if they had, the inevitable discovery exception applied.

Hylton also moved to dismiss the two counts of using a firearm during a crime of violence, arguing that armed bank robbery is not a crime of violence. The district court denied this motion, relying on *United States v. Watson*, 881 F.3d 782 (9th Cir. 2018), in which we held that armed bank robbery is a crime of violence. The case went to trial and a jury found Hylton guilty on four counts, with Hylton entering a conditional plea to the felon-in-possession charge. Hylton filed a motion for a judgment of acquittal, which the district court denied.

II

We have jurisdiction under 28 U.S.C. § 1291. A district court's "denial of a motion to suppress [evidence]" is reviewed "*de novo*, and the district court's factual findings" are reviewed for "clear error." *United States v. Norris*, 942 F.3d 902, 907 (9th Cir. 2019). "[T]he district court's application of the inevitable discovery doctrine" is reviewed "for clear error because, although it is a mixed question of

law and fact, it is essentially a factual inquiry." *United States v. Lundin*, 817 F.3d 1151, 1157 (9th Cir. 2016) (citation omitted). "Review under the clearly erroneous standard is significantly deferential, requiring for reversal a definite and firm conviction that a mistake has been committed." *United States v. Perkins*, 850 F.3d 1109, 1115 (9th Cir. 2017) (citation and internal quotation marks omitted).

"We review *de novo* a district court's denial of a Rule 29 motion for a judgment of acquittal." *United States v. Gagarin*, 950 F.3d 596, 602 (9th Cir. 2020). "In determining whether evidence was insufficient to sustain a conviction, we consider whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (cleaned up).

Finally, "a district court's determination that a prior conviction qualifies as a crime of a violence" is "review[ed] de novo." *United States v. Baldon*, 956 F.3d 1115, 1120 (9th Cir. 2020) (citation and internal quotation marks omitted).

## III

We first analyze the district court's denial of Hylton's motion to suppress. We affirm the district court because a criminal history check is a negligibly burdensome precaution required for officer safety. Alternatively, the district court's application of the inevitable discovery exception was not clearly erroneous.

### A

A traffic violation seizure "justifies a police investigation of that violation." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). A routine traffic stop is more

analogous to a *Terry* stop "than to a formal arrest," and it "can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a" ticket for the violation. *Id.* at 354–55 (cleaned up). "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." *Id.* at 354 (citations omitted).

The government's interest in officer safety "stems from the mission of the stop itself" because "[t]raffic stops are especially fraught with danger to police officers, so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely." *Id.* at 356 (citation and internal quotation marks omitted). In making this observation, the Supreme Court cited favorably to a Tenth Circuit case, *United States v. Holt*, 264 F.3d 1215, 1221–22 (10th Cir. 2001) (en banc) (abrogated on other grounds), which it characterized as "recognizing officer safety justification[s] for criminal record and outstanding warrant checks." *Rodriguez*, 575 U.S. at 356.

Given the Supreme Court's reliance on this principle, it is unsurprising that several other circuits have held that criminal history checks are permissible post-*Rodriguez*. *See United States v. Salkil*, 10 F.4th 897, 898 (8th Cir. 2021) ("During a stop, officers may complete routine tasks, such as computerized checks of the driver's license and criminal history, and the writing up of a warning." (cleaned up)); *United States v. Palmer*, 820 F.3d 640, 651 (4th Cir. 2016) ("A police officer is entitled to inquire into a motorist's criminal record after initiating a traffic stop"); *United States v. Sanford*, 806 F.3d 954, 956 (7th Cir. 2015) (a criminal history check is "a procedure permissible even without reasonable suspicion—indeed a procedure in itself normally

reasonable, as it takes little time and may reveal outstanding arrest warrants" (citations omitted)); *see also United States v. Mayville*, 955 F.3d 825, 830 (10th Cir. 2020) ("[A]n officer's decision to run a criminal-history check on an occupant of a vehicle after initiating a traffic stop is justifiable as a 'negligibly burdensome precaution' consistent with the important governmental interest in officer safety."); *United States v. Dion*, 859 F.3d 114, 127 n.11 (1st Cir. 2017).

Hylton argues that we should ignore this caselaw because we are required by *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015), to hold that the criminal history check was a prolongation of the stop and needed to be supported by independent reasonable suspicion. We disagree.

*Evans* concerned a "felon registration check," which is a computer check to see if a person is properly registered as a felon in Nevada per state law. *Id.* at 786. Because such a check is "unrelated to the traffic violation," we held in *Evans* that it cannot lawfully "prolong[] the traffic stop . . . unless there was independent reasonable suspicion." *Id.* (cleaned up). But a felon registration check only occurs after the officers know whether the person they pulled over is a felon. Whether a felon is properly registered is less related to officer safety than whether someone is a felon at all. That's why a felon registration check is "a measure aimed at detecting evidence of ordinary criminal wrongdoing," but a criminal history check is supported by an "officer safety justification." *Rodriguez*, 575 U.S. at 355–56 (cleaned up).

It's true that in a footnote in *Evans*, citing two cases from other circuits, we noted that other "courts [have] observed that extending traffic stops to perform criminal history checks may be unlawful." 786 F.3d at 787 n.7. But that observation is not controlling here for two reasons. First, we

have never otherwise held or suggested that criminal history checks are unlawful. And second, these two out-of-circuit cases, *United States v. Boyce*, 351 F.3d 1102 (11th Cir. 2003), and *United States v. Finke*, 85 F.3d 1275 (7th Cir. 1996), preceded *Rodriguez*, which "recogniz[ed] [the] officer safety justification for criminal record . . . checks." 575 U.S. at 356 (citation omitted).

Having rejected Hylton's *Evans* argument, we join our sister circuits and hold that because a criminal history check "stems from the mission of the stop itself," it is a "negligibly burdensome precaution[]" necessary "to complete [the stop] safely." *Id.* The officers thus did not need independent reasonable suspicion to perform the criminal history check.

B

Regardless, even if the criminal history check had unreasonably extended the traffic stop, the district court's application of the inevitable discovery exception was not clearly erroneous. The inevitable discovery rule is an exception to "[t]he doctrine requiring courts to suppress evidence as the tainted 'fruit' of unlawful governmental conduct." *Nix v. Williams*, 467 U.S. 431, 441 (1984). It applies if, by "following routine procedures, the police would inevitably have uncovered the evidence." *United States v. Young*, 573 F.3d 711, 721 (9th Cir. 2009) (internal quotation omitted).

Here, the officers discovered the gun during the part of the stop that Hylton concedes was lawful, before any alleged prolongation began. The district court reasoned that even if the officers had returned the gun and ended the stop before the criminal history check was completed, they still would have discovered that Hylton was a felon only two minutes later. At that point, the officers would have concluded that

Hylton was a felon in possession of a gun (in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2)) and would have pulled him over again and seized the gun. This straightforward application of the inevitable discovery rule was not clearly erroneous.

## IV

Next, we conclude that the verdict was supported by sufficient evidence. Hylton's main argument is that there is not enough evidence to prove his "identity as the perpetrator" of the bank robberies. But "viewing the evidence in the light most favorable to the prosecution," *Gagarin*, 950 F.3d at 602, we have no trouble concluding that a rational jury could have found that Hylton committed both bank robberies.

Evidence supports the conclusion that the same person committed both robberies. Both robberies involved a black man using a similar looking vehicle to rob the same bank branch in the same manner. Multiple witnesses also identified the same person as having committed both robberies, based on the sound of his voice.

Evidence also supports the conclusion that Hylton committed these robberies. First, the distinctive car used in the robberies only matched three addresses associated with black men near the bank, with one of these vehicles being registered to Hylton's girlfriend. She testified that Hylton was the only man allowed to use her car.

Second, the gun used in the first robbery was found in Hylton's possession during the traffic stop and then seized by police. Hylton also had a holster for the gun, the owner's manual, and ammunition in the house that matched that used in the first robbery. Hylton gave inconsistent statements

about how he received possession of the gun. The robber then used a different gun in the second robbery after police seized Hylton's gun.

Third, Hylton matched the description of the robber. And although he claimed to be a busy realtor, he let phone calls go to voicemail during the robberies and paid past-due rent bills a few hours after the first robbery. The police also found money in Hylton's house that was rubber banded consistent with a bank robbery.

Taken together, there is ample evidence for "any rational trier of fact" to find that Hylton was the bank robber in both robberies. *Gagarin*, 950 F.3d at 602.

V

Finally, we previously have held that "armed bank robbery is a crime of violence." *Young v. United States*, 22 F.4th 1115, 1121 (9th Cir. 2022); *see also Watson*, 881 F.3d at 784. Although Hylton argues that we should re-examine these holdings, he does not argue that "the reasoning or theory of" these cases is "clearly irreconcilable with the reasoning or theory of intervening higher authority." *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc). We are thus bound by these prior holdings and conclude here that armed robbery is a crime of violence.

VI

In conclusion, the motion to suppress was properly denied because a criminal history check is a negligibly burdensome precaution required for officer safety. And regardless, even if the stop had been impermissibly extended, the inevitable discovery exception applies because the gun would have been discovered anyway. Finally,

Hylton's conviction was supported by sufficient evidence, and armed bank robbery is a crime of violence under prior circuit precedent.

**AFFIRMED.**

# APPENDIX B

AO 245B (Rev. 09/20) Judgment in a Criminal Case
Sheet 1

# UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA
v.
ANTHONY DELANO HYLTON, JR.

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 2:17-cr-00086-HDM-NJK
USM Number: 53941-048
Richard A. Wright, Esq.
Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) Count Three of Third Superseding Indictment filed 5/19/2020

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☒ was found guilty on count(s) One, Two, Four, and Five of Superseding Indictment filed 10/3/2017 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|---|---|---|---|
| 18 U.S.C. § 2113(a) and (d) | Armed Bank Robbery | 10/7/2016 | One |
| 18 U.S.C. § 924(c)(1)(A)(iii) | Use and Carry of a Firearm During and in Relation to a Crime of Violence | 10/7/2016 | Two |
| 18 U.S.C. §§ 922(g)(1) and 924(a)(2) | Felon in Possession of a Firearm | 12/5/2016 | Three |
| 18 U.S.C. § 2113(a) and (d) | Armed Bank Robbery | 1/17/2017 | Four |
| 18 U.S.C. § 924(c)(1)(A)(ii) | Use and Carry of a Firearm During and in Relation to a Crime of Violence | 1/17/2017 | Five |

The defendant is sentenced as provided in pages 2 through 7 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) Six Third Superseding Indictment ☒ 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.

1/19/2021
Date of Imposition of Judgment

Signature of Judge

HOWARD D. McKIBBEN, Senior U.S. District Judge
Name and Title of Judge

Date January 21, 2021

DEFENDANT: ANTHONY DELANO HYLTON, JR.
CASE NUMBER: 2:17-cr-00086-HDM-NJK

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

**Seventy-eight (78) months as to Counts 1, 3, and 4, concurrent to each other;**
**One hundred twenty (120) months as to Count 2, consecutive to all other Counts; and**
**Eighty-four (84) months as to Count 5, consecutive to all other Counts for a total term of Two hundred eighty-two (282) months.**

X The court makes the following recommendations to the Bureau of Prisons:
**Strong recommendation for placement of defendant at FCI Beaumont in Texas.**
**Strong recommendation for USBOP to provide appropriate treatment for the defendant's tooth, including a root canal and filling needed for a functional tooth.**

X 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: ANTHONY DELANO HYLTON, JR.

CASE NUMBER: 2:17-cr-00086-HDM-NJK

## SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Five (5) years as Count 1, Five (5) years as to Count 2, Three (3) years as to Count 3, Five (5) years as to Count 4, and Five (5) years as to Count 5 with all counts to run concurrently.

## MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)

4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ANTHONY DELANO HYLTON, JR.
CASE NUMBER: 2:17-cr-00086-HDM-NJK

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the specific risks posed by your criminal record and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the specific risks posed by your criminal record.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: ANTHONY DELANO HYLTON, JR.
CASE NUMBER: 2:17-cr-00086-HDM-NJK

## SPECIAL CONDITIONS OF SUPERVISION

1. Substance Abuse Treatment – You must participate in an outpatient substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

2. Drug Testing – You must submit to substance abuse testing to determine if you have used a prohibited substance. Testing shall not exceed 104 tests per year. You must not attempt to obstruct or tamper with the testing methods.

3. Debt Obligations – You must not incur new credit charges, or open additional lines of credit without the approval of the probation officer.

4. Access to Financial Information – You must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.

5. Search and Seizure – You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: ANTHONY DELANO HYLTON, JR.
CASE NUMBER: 2:17-cr-00086-HDM-NJK

## CRIMINAL MONETARY PENALTIES

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

| | Assessment | Restitution | Fine | AVAA Assessment* | JVTA Assessment** |
|---|---|---|---|---|---|
| TOTALS | $ 500.00 | $ 87,531.00 | $ 0.00 | $ 0.00 | $ 0.00 |

☐ 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.

| Name of Payee | Total Loss*** | Restitution Ordered | Priority or Percentage |
|---|---|---|---|
| Citibank<br>10211 S. Eastern Avenue<br>Henderson, NV 89052 | | $87,531.00 | |

Clerk, U.S. District Court
Attn: Financial Officer
#2:17-cr-86-HDM-NJK
333 Las Vegas Blvd. S
Las Vegas, NV 89101

| | | |
|---|---|---|
| TOTALS | $ _____ | $ 87,531.00 |

☐ 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 ☐ fin ☐ restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** 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: ANTHONY DELANO HYLTON, JR.
CASE NUMBER: 2:17-cr-00086-HDM-NJK

## SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payment of $ 88,031.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ 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:

Restitution is mandatory in the amount of $87,531, with interest, payable immediately. Any unpaid balance shall be paid at a monthly rate of not less than 10% of any income earned during incarceration and/or gross income while on supervision, subject to adjustment by the Court based upon ability to pay.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several

| Case Number<br>Defendant and Co-Defendant Names<br>*(including defendant number)* | Total Amount | Joint and Several Amount | 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) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

# APPENDIX C

FILED

JUL 1 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>ANTHONY DELANO HYLTON, Jr.,<br><br>Defendant-Appellant. | No. 21-10026<br><br>D.C. No.<br>2:17-cr-00086-HDM-NJK-1<br>District of Nevada,<br>Las Vegas<br><br>ORDER |

Before: GOULD, BENNETT, and R. NELSON, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing and rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petitions for panel rehearing and rehearing en banc are **DENIED**.