

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

NATHAN REYES,

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/ Adam Nicholson

JASON HAWKINS
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Northern District of Texas
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- Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered May 25, 2005, *United States v. Reyes*, Dist. Court 5:23-CR-111-H-BQ.
- Appendix C Judgment of Revocation and Sentence of the United States District Court for the Northern District of Texas, entered February 8, 2024. *United States v. Reyes*, Dist. Court 5:23-CR-111-H-BQ.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 24-10133
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 8, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

NATHAN REYES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:23-CR-111-1

Before DAVIS, SMITH, and HIGGINSON, *Circuit Judges*.

PER CURIAM:*

Nathan Reyes appeals from the judgment of the district court revoking his term of supervised release and sentencing him to 21 months in prison and no additional term of supervised release. For the first time on appeal, Reyes contests the constitutionality of 18 U.S.C. § 3583(g), which mandates revocation of supervised release and imposition of a term of imprisonment

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 24-10133

for any offender who violates particular conditions of supervised release, including, inter alia, refusal to comply with drug testing and possession of a controlled substance.

Relying on *United States v. Haymond*, 588 U.S. 634 (2019), Reyes maintains 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 and requiring proof beyond a reasonable doubt. However, he acknowledges that his challenge is foreclosed by *United States v. Garner*, 969 F.3d 550 (5th Cir. 2020), and merely asserts the issue to preserve it for further review. The Government has filed an unopposed motion for summary affirmance, or, in the alternative, for an extension of time to file its brief.

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

APPENDIX B

UNITED STATES DISTRICT COURT

Northern District of Texas - Amarillo Division

UNITED STATES OF AMERICA
V.

JUDGMENT IN A CRIMINAL CASE

NATHAN REYES

Case Number: **2:05-cr-004-J(01)**

USM Number: **15878-180**

Bonita L. Gunden

Defendant's Attorney

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

MAY 25 2005

CLERK, U.S. DISTRICT COURT

By

Deputy

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) One (1) of the one count Indictment filed January 12, 2005
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U. S. C. §2113(a)	Bank Robbery	12/15/04	1

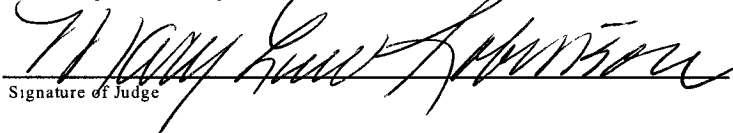
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ 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.

May 25, 2005

Date of Imposition of Judgment



Signature of Judge

MARY LOU ROBINSON
U. S. DISTRICT JUDGE

Name and Title of Judge

May 25, 2005

Date

DEFENDANT: **NATHAN REYES**
CASE NUMBER: **2:05-cr-004-J(01)**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **225 months**

☒ The court makes the following recommendations to the Bureau of Prisons:
that cost of incarceration fee is waived. The Court further recommends that defendant be allowed to participate in the Residential Drug Treatment Program.

☒ 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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **NATHAN REYES**
CASE NUMBER: **2:05-cr-004-J(01)**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **three (3) years**.

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

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 from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ 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: **NATHAN REYES**
CASE NUMBER: **2:05-cr-004-J(01)**

SPECIAL CONDITIONS OF SUPERVISION

The following additional condition is recommended:

- 1. The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.**
- 2. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.**
- 3. Pursuant to the Mandatory Victim Restitution Act of 1996, the defendant shall pay restitution in the amount of \$8,770.00 payable to the U. S. District Clerk, 205 East Fifth, Amarillo, TX 79101, for disbursement to: Happy State Bank, Attn: Cashier, 3423 Soncy, Amarillo, TX 79119. If upon commencement of the term of supervised release any part of the restitution remains unpaid, the defendant shall make payments on such unpaid balance beginning 60 days after release from custody at the rate of at least \$150.00 per month until the restitution is paid in full. Further, it is ordered that interest on the unpaid balance is waived pursuant to 18 U.S.C. §3612(f)(3).**
- 4. The defendant shall refrain from incurring new credit charges or opening additional lines of credit without approval of the U. S. Probation Officer.**
- 5. The defendant shall provide to the U. S. probation Officer any requested financial information.**
- 6. The defendant shall participate in a program approved by the U. S. probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of alcohol and/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$5.00 per month.**
- 7. The defendant shall participate in mental health treatment services as directed by the U. S. Probation Officer until successfully discharged. These services may include mediations prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$5.00 per month.**
- 8. The defendant shall obtain approval of the U. S. probation Officer prior to a change in residence or living situation.**

DEFENDANT: **NATHAN REYES**

CASE NUMBER: **2:05-cr-004-J(01)**

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	\$ 100.00	\$	\$ 8,770.00

☐ 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.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Happy State Bank Attn: Cashier 3423 Soney Amarillo, TX 79119		\$8,770.00	

TOTALS	\$ _____	\$ <u>8,770.00</u>
---------------	-----------------	---------------------------

☐ 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:

* 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: **NATHAN REYES**
CASE NUMBER: **2:05-cr-004-J(01)**

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 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 monthly (e.g., weekly, monthly, quarterly) installments of \$ 150.00 over a period of xxxxxxx (e.g., months or years), to commence 60 (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:
It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, which shall be due immediately. Said special assessment shall be made to the Clerk, U. S. District Clerk.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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

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: See Sheet 6B.

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.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Probation or Supervised Release)

v.

NATHAN REYES

Case Number: **5:23-CR-00111-H-BQ(1)**

USM Number: **15878-180**

Wade William Iverson

Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	admitted guilt to violation of condition(s)	Three (3) mandatory conditions, one (1) standard condition, and four (4) special conditions of the term of supervision.
<input type="checkbox"/>	was found in violation of condition(s)	after denial of guilt.

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) and is discharged as to such violation(s) condition.

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.

Last Four Digits of Defendant's Soc. Sec. 2787

Defendant's Year of Birth: 1978

City and State of Defendant's Residence:
Lubbock, Texas

February 8, 2024

Date of Imposition of Judgment

Signature of Judge

James Wesley Hendrix
United States District Judge
Name and Title of Judge

February 8, 2024

Date

DEFENDANT: NATHAN REYES
CASE NUMBER: 5:23-CR-00111-H-BQ(1)

IMPRISONMENT

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

Twenty-one (21) months. This sentence shall run consecutively to any sentence imposed in Case Nos. PFF-2023-MAG-4089, PFF-2023-MAG-4090, and PFF-2023-MAG-5220, all pending in the Magistrate Court, Lubbock County, Texas.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ 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: NATHAN REYES
CASE NUMBER: 5:23-CR-00111-H-BQ(1)

SUPERVISED RELEASE

No further term of Supervised Release imposed.