

United States Court of Appeals for the Fifth Circuit

No. 26-10016
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 17, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANDRE DEMARCUS RUBELL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-166-1

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

PER CURIAM:*

Andre Demarcus Rubell appeals a judgment revoking his term of supervised release and sentencing him to 12 months of imprisonment. Relying on *United States v. Haymond*, 588 U.S. 634 (2019), he argues for the first time in this appeal that 18 U.S.C. § 3583(g) is unconstitutional because it requires revocation of supervised release and imposition of a term of

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

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imprisonment without affording the defendant the constitutionally guaranteed right to a jury trial or requiring proof beyond a reasonable doubt. Rubell acknowledges that his challenge is foreclosed by *United States v. Garner*, 969 F.3d 550 (5th Cir. 2020). The government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file its brief.

Garner rejected the theory that Rubell raises and held that § 3583(g) is not unconstitutional under *Haymond*. *See Garner*, 969 F.3d at 551. Because Rubell's sole issue on appeal is foreclosed, summary affirmance is proper. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The motion for summary affirmance is GRANTED, the alternative motion for an extension is DENIED, and the judgment is AFFIRMED.