

# United States Court of Appeals for the Fifth Circuit

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No. 26-10016  
Summary Calendar

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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.*

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

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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

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\* 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.