

APPENDIX A

United States v. Lopez-Mendez,
No. 17-50215 (5th Cir. Apr. 5, 2018) (unpublished)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-50215
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
April 5, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ERICK ROLANDO LOPEZ-MENDEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:16-CR-1810-1

Before STEWART, Chief Judge, and DENNIS and HAYNES, Circuit Judges.

PER CURIAM:*

Erick Rolando Lopez-Mendez challenges his 77-month within-guidelines sentence for being found unlawfully present in the United States after deportation. The district court heard Lopez-Mendez's arguments for a lower sentence but determined that a within-guidelines sentence was appropriate. We have rejected the argument that a presumption of reasonableness should not apply to sentences pursuant to the illegal reentry Guideline, U.S.S.G.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 17-50215

§ 2L1.2, because the Guideline lacks an empirical basis, *United States v. Mondragon-Santiago*, 564 F.3d 357, 366-67 (5th Cir. 2009), and we have also rejected the argument that § 2L1.2 renders a sentence unreasonable by double-counting a defendant's criminal history, *United States v. Duarte*, 569 F.3d 528, 529-31 (5th Cir. 2009). Although Lopez-Mendez argues that he returned to the United States because he had lived in this country since age 13 and because he wanted to see his family, this is insufficient to rebut the presumption of reasonableness applicable to his within-guidelines sentence. *See United States v. Gomez-Herrera*, 523 F.3d 554, 565-66 (5th Cir. 2008). Thus, he has failed to show that his sentence is substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 49-51 (2007).

AFFIRMED.

APPENDIX B

U.S.S.G. § 2L1.2

 KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or Preempted Held Unconstitutional by [U.S. v. Detwiler](#), D.Or., Oct. 05, 2004

[United States Code Annotated](#)

[Federal Sentencing Guidelines \(Refs & Annos\)](#)

[Chapter Two. Offense Conduct \(Refs & Annos\)](#)

[Part L. Offenses Involving Immigration, Naturalization, and Passports](#)

[1. Immigration](#)

USSG, § **2L1.2**, 18 U.S.C.A.

§ **2L1.2**. Unlawfully Entering or Remaining in the United States

[Currentness](#)

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) (Apply the Greater) If the defendant committed the instant offense after sustaining--

(A) a conviction for a felony that is an illegal reentry offense, increase by 4 levels; or

(B) two or more convictions for misdemeanors under [8 U.S.C. § 1325\(a\)](#), increase by 2 levels.

(2) (Apply the Greatest) If, before the defendant was ordered deported or ordered removed from the United States for the first time, the defendant sustained--

(A) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by 10 levels;

(B) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by 8 levels;

(C) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by 6 levels;

(D) a conviction for any other felony offense (other than an illegal reentry offense), increase by 4 levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 2 levels.

(3) (Apply the Greatest) If, at any time after the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct resulting in--

(A) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by 10 levels;

(B) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by 8 levels;

(C) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by 6 levels;

(D) a conviction for any other felony offense (other than an illegal reentry offense), increase by 4 levels; or

(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 2 levels.

CREDIT(S)

(Effective November 1, 1987; amended effective January 15, 1988; November 1, 1989; November 1, 1991; November 1, 1995; November 1, 1997; November 1, 2001; November 1, 2002; November 1, 2003; November 1, 2007; November 1, 2008; November 1, 2010; November 1, 2011; November 1, 2012; November 1, 2014; November 1, 2015; November 1, 2016.)

PROPOSED AMENDMENT OF SUBSEC. (B)(2)

<Effective November 1, 2018, absent contrary Congressional action, subsec. (b)(2) is amended to read as follows:>

<(2) (Apply the Greatest) If, before the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct that, at any time, resulted in-->

<(A) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was five years or more, increase by 10 levels;>

<(B) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed was two years or more, increase by 8 levels;>

<(C) a conviction for a felony offense (other than an illegal reentry offense) for which the sentence imposed exceeded one year and one month, increase by 6 levels;>

<(D) a conviction for any other felony offense (other than an illegal reentry offense), increase by 4 levels; or>

<(E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by 2 levels.>