

No. \_\_ - \_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
RAYMOND SANCHEZ LOPEZ,

*Petitioner*

v.

UNITED STATES OF AMERICA

*Respondent*

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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## APPENDIX A

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

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No. 17-11043  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

April 19, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RAYMOND SANCHEZ LOPEZ,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:17-CR-30-1

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Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:\*

Raymond Sanchez Lopez appeals his conviction for possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B). He asserts that § 2252A(a)(5)(B) should be construed as requiring the Government to prove, or the defendant to admit, that the “offense caused the [child pornography] to move in interstate commerce, or, at least, . . . that the relevant [child pornography] moved in interstate commerce at a time reasonably near the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

offense.” Relying on the Supreme Court’s decision in *Bond v. United States*, 134 S. Ct. 2077 (2014), Lopez contends that a conviction in the absence of such proof impermissibly intrudes upon the police power of the States. Lopez further argues that the factual basis for his guilty plea was insufficient under Federal Rule of Criminal Procedure 11 because he did not admit to such facts. The Government has moved for summary affirmance in lieu of filing an appellate brief or, alternatively, an extension of time to file a brief.

“Rule 11(b)(3) requires a district court taking a guilty plea to make certain that the *factual* conduct admitted by the defendant is sufficient as a *matter of law* to establish a violation of the statute to which he entered his plea.” *United States v. Trejo*, 610 F.3d 308, 313 (5th Cir. 2010) (footnote omitted). Plain error review applies to Lopez’s forfeited objection to the factual basis for his guilty plea. *See id.* To establish plain error, Lopez must show a forfeited error that is clear or obvious and that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing, this court has the discretion to correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See id.*

We have held that the Commerce Clause authorizes Congress to prohibit local, intrastate possession and production of child pornography where the materials used in the production were moved in interstate commerce. *See United States v. Dickson*, 632 F.3d 186, 192 (5th Cir. 2011); *United States v. Kallestad*, 236 F.3d 225 (5th Cir. 2000). The Supreme Court’s decision in *Bond* did not abrogate the holdings of these cases. As Lopez concedes, the district court’s finding that there was a sufficient factual basis for his guilty plea was not a clear or obvious error in light of this caselaw. *See Puckett*, 556 U.S. at 135. Lopez raises the issue to preserve it for further review.

Alternatively, Lopez asserts that *Dickson* and *Kallestad* were wrongly decided and that the Commerce Clause does not authorize Congress to impose federal criminal liability where the defendant's conduct is tenuously related to interstate commerce. He also argues, in the alternative, that plain error review should not apply to his forfeited objection to the factual basis of his guilty plea. One panel of this court may not overrule the decision of another absent a superseding en banc or Supreme Court decision. *United States v. Lipscomb*, 299 F.3d 303, 313 & n.34 (5th Cir. 2002). Accordingly, Lopez is correct that relief on these issues is foreclosed.

Summary affirmance is not appropriate, and the Government's motion is DENIED. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's alternative motion for an extension of time to file a brief is DENIED as unnecessary. The judgment of the district court is AFFIRMED.

## APPENDIX B

~~United States District Court~~

Northern District of Texas  
Lubbock Division

UNITED STATES OF AMERICA

v.

RAYMOND SANCHEZ LOPEZ  
Defendant.

Case Number: 5:17-CR-00030-C(01)  
USM No. 55645-177

**AMENDED JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

DATE OF ORIGINAL JUDGMENT: September 1, 2017.

REASON FOR AMENDMENT: Upon motion of the Government to include the forfeited property as shown on page 4 of the Judgment.

The defendant, RAYMOND SANCHEZ LOPEZ, was represented by David E. Sloan.

The defendant pleaded guilty to count 1 of the indictment filed April 12, 2017. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
18 U.S.C. § 2252A(a)(5)(B)	Possession Of Child Pornography	06/26/2015	1

As pronounced on September 1, 2017, the defendant is sentenced as provided in pages 1 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1 of the indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further 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 change in the defendant's economic circumstances.

Signed this the 30th day of November, 2017.



SENIOR DISTRICT JUDGE SAM R. CUMMINGS  
UNITED STATES DISTRICT COURT



DEFENDANT: RAYMOND SANCHEZ LOPEZ  
CASE NUMBER: 5:17-CR-00030-C(01)

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### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months as to count 1 to run concurrent with any sentence imposed in Case No. 2015-406,569, pending in the 137<sup>th</sup> District Court of Lubbock County, Texas, and to run consecutive to any sentence imposed in Case No. 2015-406,568, also pending in the 137<sup>th</sup> District Court of Lubbock County, Texas.

The defendant shall remain in the custody of the U.S. Marshal Service.

The court recommends placement at FCI Seagoville, Texas.

### RETURN

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: RAYMOND SANCHEZ LOPEZ  
CASE NUMBER: 5:17-CR-00030-C(01)

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### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 10 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 illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

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 directed by the probation officer.

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.
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- ☒ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.
- ☐ The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the 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 in a manner and frequency directed by the court or probation officer.
- 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 by 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.
- 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: RAYMOND SANCHEZ LOPEZ  
CASE NUMBER: 5:17-CR-00030-C(01)

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### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall have no unsupervised contact with persons under the age of 18, nor shall the defendant loiter near places where children may frequently congregate. The defendant shall neither seek nor maintain employment or volunteer work at any location and/or activity where persons under the age of 18 congregate and the defendant shall not date or befriend anyone who has children under the age of 18, without prior permission of the probation officer.
2. The defendant shall neither possess nor have under his control any sexually oriented, or sexually stimulating materials of adults or children. The defendant shall not patronize any place where such material is available.
3. The defendant shall not possess, have access to, or utilize a computer or internet connection device without permission of the Court.
4. The defendant shall have no contact with the victim(s) or the victim's family, directly or indirectly, without prior approval by the probation officer.
5. The defendant shall not utilize or possess a camera, recording device, camcorder, or other similar device during the term of supervised release, without prior approval by the probation officer.
6. The defendant shall participate in sex offender treatment services as directed by the probation officer until successfully discharged. These services may include psycho-physiological testing (i.e., clinical polygraph, plethysmograph, and the ABEL screen) to monitor the defendant's compliance, treatment progress, and risk to the community. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20.00 per month.
7. The defendant shall participate in a program (inpatient and/or outpatient) 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 contribute to the costs of services rendered (copayment) at a rate of at least \$20.00 per month.
8. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.

### **CRIMINAL FORFEITURE**

Pursuant to 21 U.S.C. § 853, it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: one Lexar 1 GB Micro SD card from the defendant.