

No. 18-_____

IN THE
SUPREME COURT OF THE UNITED STATES

MIGUEL RODRIGUEZ-GARCIA,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL
CASE

v.

MIGUEL RODRIGUEZ-GARCIA

Case Number: 3:17-CR-00253-B(1)
USM Number: 25654-479

Lara Meghan Wynn
Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 1 of the one-count Indictment filed May 2, 2017
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326(a) & (b)(1) - Illegal Reentry After Removal from the United States	11/01/2016	1

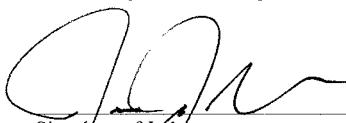
The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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.

November 8, 2017

Date of Imposition of Judgment


Signature of Judge
JANE J. BOYLE, UNITED STATES DISTRICT JUDGE
Name and Title of Judge

October 3, 2018

Date

DEFENDANT: MIGUEL RODRIGUEZ-GARCIA
CASE NUMBER: 3:17-CR-00253-B(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: 46 months as to count 1. No term of supervised release imposed.

- The court makes the following recommendations to the Bureau of Prisons:
 - that the defendant be allowed to serve his sentence at a Bureau of Prisons facility in the Dallas-Fort Worth area.
- 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: MIGUEL RODRIGUEZ-GARCIA
 CASE NUMBER: 3:17-CR-00253-B(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C) 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** 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: MIGUEL RODRIGUEZ-GARCIA
 CASE NUMBER: 3:17-CR-00253-B(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payments of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance 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 20 (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 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 for Count 1 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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

See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- 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:

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX B

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

No. 17-11345
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 10, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIGUEL RODRIGUEZ-GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 3:17-CR-253-1

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Miguel Rodriguez-Garcia pleaded guilty of illegal reentry in violation of

* 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.

8 U.S.C. § 1326. The district court adopted the presentence report (“PSR”) and sentenced Rodriguez-Garcia, within the advisory guideline range, to 46 months. The PSR listed a pre-removal Texas conviction of burglary of a habitation and stated that the applicable statutory maximum was 20 years under § 1326(b)(2), and the written judgment reflects that Rodriguez-Garcia was sentenced under § 1326(b)(2). Rodriguez-Garcia appeals, contending for the first time that, because the court erroneously characterized his burglary conviction as an aggravated felony for the purpose of § 1326(b)(2), he is entitled either to resentencing or to correction of the judgment.

We review for plain error, which requires Rodriguez-Garcia to show (1) a forfeited error (2) that is clear and obvious, and (3) that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he can satisfy those three requirements, this court has the discretion to remedy the error if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” *Id.* (internal quotation marks and citation omitted).

The parties agree that Texas burglary of a habitation is no longer an aggravated felony for the purpose of § 1326(b)(2). See *United States v. Godoy*, 890 F.3d 531, 536–42 (5th Cir. 2018). The record, however, does not indicate that the district court’s selection of a 46-month sentence within the correctly calculated range was affected by its belief that the statutory maximum was 20 years under § 1326(b)(2) instead of 10 years under § 1326(b)(1). See *United States v. Mondragon-Santiago*, 564 F.3d 357, 368–69 (5th Cir. 2009). Rodriguez-Garcia therefore fails to show that the error affected his substantial rights. See *Puckett*, 556 U.S. at 135; *Mondragon-Santiago*, 564 F.3d at 369. We do not read *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1346, 1348 (2016), as requiring a different result. But we agree with Rodriguez-Garcia that the judgment should be corrected to reflect conviction and sentence under

§ 1326(b)(1) instead of § 1326(b)(2). *See United States v. Ovalle-Garcia*, 868 F.3d 313, 314 (5th Cir. 2017).

The judgment is REMANDED only for correction to reflect conviction and sentence under § 1326(b)(1) instead of § 1326(b)(2). In all other respects, the judgment is AFFIRMED.