

No. 19-

IN THE
Supreme Court of the United States

JOSE JORGE ESPINOZA-MENDOZA,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

APPENDIX VOLUME

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-40107
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
October 31, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE JORGE ESPINOZA-MENDOZA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:17-CR-1281-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Jose Jorge Espinoza-Mendoza appeals the 71-month sentence he received following his guilty-plea conviction for conspiracy to harbor undocumented aliens in violation of 8 U.S.C. § 1324. Espinoza-Mendoza argues that the district court erred by enhancing his sentence pursuant to U.S.S.G. § 2L1.1(b)(6) based on a finding that his offense involved a substantial risk of bodily injury.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 18-40107

This court reviews a district court's interpretation and application of the Guidelines *de novo* and the district court's fact findings relative to the § 2L1.1(b)(6) enhancement for clear error. *United States v. Mateo Garza*, 541 F.3d 290, 293 (5th Cir. 2008). The transportation of aliens in the trunk of a vehicle is specifically listed in the comments to § 2L1.1(b)(6) as the type of conduct contemplated by the Sentencing Commission in drafting the guideline provision to be "reckless conduct." § 2L1.1, comment. (n.3); *see Mateo Garza*, 541 F.3d at 293-94 (observing that transporting persons in a trunk or engine compartment of a vehicle *per se* creates a substantial risk of serious bodily injury or death because those areas are not designed to hold human passengers). Accordingly, the district court did not err by enhancing Espinoza-Mendoza's sentence based on its finding that he was responsible for the transportation of aliens in the trunk of at least one vehicle.

Accordingly, the judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
Southern District of Texas
Holding Session in McAllen

ENTERED

January 25, 2018

David J. Bradley, Clerk

UNITED STATES OF AMERICA
V.

JOSE JORGE ESPINOZA-MENDOZA

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 7:17CR01281-001
USM NUMBER: 54453-379 See Additional Aliases.

THE DEFENDANT:

pleaded guilty to count(s) 1 on November 1, 2017.

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1324(a)(1)(A)(v)(I), 1324(a)(1)(A)(iii) & 1324(a)(1)(B)(i)	Conspiracy to harbor an alien within the U.S.	08/10/2017	1

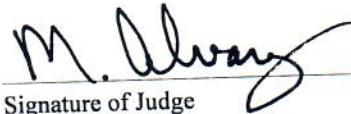
 See Additional Counts of Conviction.

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) 2 and 4, as they pertain to this defendant 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.

January 11, 2018
Date of Imposition of Judgment
Signature of JudgeMICHAELA ALVAREZ
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

January 25, 2018

Date

ds | 319847
PAB

DEFENDANT: JOSE JORGE ESPINOZA-MENDOZA

CASE NUMBER: 7:17CR01281-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 71 months.

See Additional Imprisonment Terms.

The court makes the following recommendations to the Bureau of Prisons:

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: JOSE JORGE ESPINOZA-MENDOZA
CASE NUMBER: 7:17CR01281-001

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00		

- See Additional Terms for Criminal Monetary Penalties.
- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

- See Additional Restitution Payees.

TOTALS	<u>\$0.00</u>	<u>\$0.00</u>
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- 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:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:
- Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* 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: JOSE JORGE ESPINOZA-MENDOZA
CASE NUMBER: 7:17CR01281-001

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 payment of \$100.00 due immediately, balance due
 not later than _____, or
 in accordance with 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 _____ installments of _____ over a period of _____, to commence _____ days after the date of this judgment; or

D Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ 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:

Payable to: Clerk, U.S. District Court
Attn: Finance
P.O. Box 5059
McAllen, TX 78502

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

Case Number

**Defendant and Co-Defendant Names
(including defendant number)**

Total Amount

**Joint and Several
Amount**

**Corresponding Payee,
if appropriate**

See Additional Defendants and Co-Defendants Held Joint and Several.
 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:
 See Additional Forfeited Property.

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