

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LUIS DAVID MORENO-PENA,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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APPENDIX A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

LUIS DAVID MORENO-PENA

Case Number: 4:18-CR-00003-O(01)
U.S. Marshal's No.: 43080-177
J. Michael Worley, Assistant U.S. Attorney
Michael A. Lehmann, Attorney for the Defendant

On January 31, 2018 the defendant, LUIS DAVID MORENO-PENA, entered a plea of guilty as to Count One of the Indictment filed on January 9, 2018. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

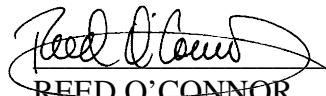
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326(a) and (b)(1)	Illegal Reentry After Deportation	December 20, 2016	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on January 9, 2018.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed May 21, 2018.


REED O'CONNOR
U.S. DISTRICT JUDGE

Signed May 25, 2018.

Judgment in a Criminal Case
Defendant: LUIS DAVID MORENO-PENA
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IMPRISONMENT

The defendant, LUIS DAVID MORENO-PENA, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Seventy-Eight (78) months** as to Count One of the Indictment filed on January 9, 2018. This sentence is to run consecutively to any sentence imposed in Paragraph 52 of the PSR.

The Court recommends that the defendant be housed at an FCI facility within the Northern District of Texas area, if possible.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Three (3) years** as to Count One of the Indictment filed on January 9, 2018.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions recommended by the U.S. Sentencing Commission and shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and,

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- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry;

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 the defendant resides, works, is a student, or was convicted of a qualifying offense;

refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation or release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer, pursuant to the mandatory drug testing provision of the 1994 crime bill; and,

take notice that as a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case
Defendant: LUIS DAVID MORENO-PENA
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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 Marshal

APPENDIX B

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

No. 18-10685
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
March 26, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS DAVID MORENO-PENA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-3-1

Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Luis David Moreno-Pena appeals his 78-month, above-guidelines sentence for illegal reentry following deportation, arguing, for the first time on appeal, that it is procedurally unreasonable because the district court's sentencing explanation failed to address his request for a variance based on his time spent in pre-indictment state custody. Although he concedes that he did not timely object to the district court's explanation, Moreno-Pena contends

* 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. 18-10685

that this issue should be reviewed de novo in light of *Chavez-Meza v. United States*, 139 S. Ct. 1959 (2018). We adhere to our established precedent, see *United States v. Boche-Perez*, 755 F.3d 327, 334 (5th Cir. 2014) (rule of orderliness), and we review for plain error, see *United States v. Mondragon-Santiago*, 564 F.3d 357, 364 (5th Cir. 2009).

Moreno-Pena does not undertake any plain error analysis and has therefore waived any argument that plain error occurred. See *United States v. Ledezma-Cepeda*, 894 F.3d 686, 692 (5th Cir.), *cert. denied*, 139 S. Ct. 467 (2018). As a result, he fails to show reversible plain error. See *Puckett v. United States*, 556 U.S. 129, 135 (2009). The judgment is AFFIRMED.