

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JESUS ALONSO GONZALEZ GONZALEZ,

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**

No. 18-10763
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 12, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS ALONSO GONZALEZ GONZALEZ, also known as Jesus Gonzalez,
also known as Jesus Alonzo Gonzalez, also known as Alonzo Gonzalez, also
known as Roberto Soto,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-19-1

Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Jesus Alonso Gonzalez Gonzalez appeals the 42-month sentence imposed following his guilty plea to possession of a firearm by an illegal alien. He argues that the district court plainly erred in failing to give him the opportunity to allocute prior to denying his motion for a downward variance.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

However, Gonzalez Gonzalez concedes that his argument is foreclosed by circuit precedent, and he raises the issue to preserve it for further review.

The Government has filed an unopposed motion for summary affirmance; in the alternative, it requests an extension of time to file its brief. The Government asserts that the parties are in agreement that, under circuit precedent, Gonzalez Gonzalez's argument is foreclosed. Summary affirmance is proper, where among other instances, "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

This court has held that a district court does not commit plain error in ruling on a motion for a downward variance before giving the defendant the opportunity to allocute. *United States v. Pittsinger*, 874 F.3d 446, 451-54 (5th Cir. 2017). One panel of this court may not overrule the decision of a prior panel in the absence of en banc consideration or a superseding Supreme Court decision. *United States v. Lipscomb*, 299 F.3d 303, 313 n.34 (5th Cir. 2002).

In view of the foregoing, the Government's motion for summary affirmance is GRANTED. The Government's alternative motion for an extension of time to file a brief is DENIED. The judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:18-CR-00019-Y(1)

Frank L. Gatto, assistant U.S. attorney

JESUS ALONSO GONZALEZ
GONZALEZ

Michael A. Lehmann, attorney for the defendant

On February 7, 2018, the defendant, Jesus Alonso Gonzalez Gonzalez, entered a plea of guilty to count one of the one-count information. 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 CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. § 922(g)(5) & 924(a)(2)	Unlawful Firearm Possession By An Illegal Alien	December 14, 2017	1

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

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count information.

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 June 12, 2018.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed June 13, 2018.

IMPRISONMENT

The defendant, Jesus Alonso Gonzalez Gonzalez, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 42 months on count one of the one-count information.

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 years on count one of the one-count information. The Court imposed a term of supervised release because it will provide an added measure of deterrence and protection based on the facts and circumstances of this case.

Pursuant to 18 U.S.C. §3583(d), as a condition of supervised release upon the completion of the sentence of imprisonment, the defendant shall be surrendered by the Federal Bureau of Prisons 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 condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

If 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, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer in a manner and frequency directed by the Court or probation officer;
- (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
- (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;

Defendant: Jesus Alonso Gonzalez Gonzalez

Case Number: 4:18-CR-00019-Y(1)

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

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

report in person to the probation office in the district to which the defendant is released from the 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; and

not illegally re-enter the United States, if deported, removed, or allowed voluntary departure.

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.

FORFEITURE

Under 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is forfeited to the United States:

1) a Taurus, Model PT 92 AF, 9 millimeter semiautomatic pistol, bearing Serial No. TIG79751.

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