

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ARTURO EDUARDO DOMINGUEZ-CALDERON,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the Northern
District of Texas

APPENDIX A

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

United States Court of Appeals
Fifth Circuit

FILED

June 24, 2019

Lyle W. Cayce
Clerk

No. 18-11238
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARTURO EDUARDO DOMINGUEZ-CALDERON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-105-1

Before BENAVIDES, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:*

Arturo Eduardo Dominguez-Calderon pleaded guilty to being an alien who had illegally reentered this country. The district court varied upward from the applicable guidelines sentencing range and sentenced Dominguez-Calderon to 48 months of imprisonment and a one-year term of supervised release. Dominguez-Calderon now appeals his sentence as being substantively unreasonable. He argues that the district court's failure to reduce the extent

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of the upward variance after learning that he had been previously removed once and had voluntarily departed once, rather than being removed on three occasions, constituted a clear error of judgment.

Sentences, whether inside or outside the Guidelines, are reviewed for reasonableness in light of the 18 U.S.C. § 3553(a) factors. *Gall v. United States*, 552 U.S. 38, 51 (2007). A sentence is unreasonable if it “(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006).

Dominguez-Calderon’s request that this court “review whether a defendant can reasonably receive the same upward variance irrespective of the number of prior removals and re-entries” and remand for resentencing does not comport with the case-specific approach to sentencing required by § 3553(a) and essentially asks this court to reweigh the sentencing factors, which this court will not do. *See United States v. McElwee*, 646 F.3d 328, 343-44 (5th Cir. 2011). Because Dominguez-Calderon does not otherwise challenge the upward variance, 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.
ARTURO EDUARDO DOMINGUEZ-CALDERON

Case Number: 4:18-CR-00105-O(01)
U.S. Marshal's No.: 08199-359
J. Michael Worley, Assistant U.S. Attorney
Brook Antonio, Attorney for the Defendant

On May 23, 2018 the defendant, ARTURO EDUARDO DOMINGUEZ-CALDERON, entered a plea of guilty as to Count One of the Indictment filed on May 8, 2018. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

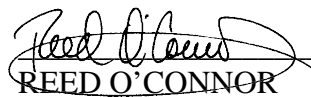
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326(a) and (b)(1)	Illegal Reentry After Deportation	3/26/2018	One

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 May 8, 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 August 27, 2018.


REED O'CONNOR
U.S. DISTRICT JUDGE

Signed August 31, 2018.

Judgment in a Criminal Case

Page 2 of 4

Defendant: ARTURO EDUARDO DOMINGUEZ-CALDERON

Case Number: 4:18-CR-00105-O(1)

IMPRISONMENT

The defendant, ARTURO EDUARDO DOMINGUEZ-CALDERON, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Forty-Eight (48) months** as to Count One of the Indictment filed on May 8, 2018.

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 **One (1) year** as to Count One of the Indictment filed on May 8, 2018.

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 USC § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

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 contained in the Judgment and shall comply with the mandatory and special conditions stated herein:

- (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;

Judgment in a Criminal Case

Page 3 of 4

Defendant: ARTURO EDUARDO DOMINGUEZ-CALDERON

Case Number: 4:18-CR-00105-O(1)

- (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;

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 re-entry into the United States, within 72 hours of release or re-entry; and,

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of placement on probation 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.

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: ARTURO EDUARDO DOMINGUEZ-CALDERON
Case Number: 4:18-CR-00105-O(1)

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