

No. \_\_\_\_\_

---

IN THE SUPREME COURT OF THE UNITED STATES

---

RUBEN NAVARRETE-FELIX  
Petitioner

v.

UNITED STATES OF AMERICA  
Respondent

---

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

---

—  
Kenneth M. Miller  
107 Avenida Miramar, Ste. C  
San Clemente, CA 92672  
[Ken@KMMillerlaw.com](mailto:Ken@KMMillerlaw.com)  
949-388-3440

Counsel of Record for the Petitioner Ruben Navarrete-Felix

**QUESTION PRESENTED**

Is it an abuse of discretion to sentence a recidivist pursuant to a blanket policy of always imposing a longer sentence than the defendant previously received, regardless of the other sentencing factors set forth in 18 U.S.C. § 3553(a)?

## **TABLE OF CONTENTS**

OPINION BELOW	2
JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF CASE	2
REASONS FOR GRANTING THE PETITION	6
CONCLUSION	7
 <b><u>APPENDICES:</u></b>	
Appendix A – Ninth Circuit’s Unpublished Memorandum Decision	A-1
Appendix B – U.S. District Court Sentencing Transcript	A-5
Appendix C – Motion for Judicial Notice to Ninth Circuit	A-22
Appendix D – “Appendix B” to AOB in Ninth Circuit	A-31
Appendix E - Relevant Federal Statutory Provisions	A-37

## **TABLE OF AUTHORITIES**

### **CASES**

<i>Gall v. United States</i> , 552 U.S. 38 (2007)	5, 6
<i>Rita v. United States</i> , 551 U.S. 338 (2007)	6
<i>United States v. Gutierrez-Sanchez</i> , 587 F.3d 904 (9th Cir. 2009)	3
<i>United States v. Rosales-Gonzales</i> , 801 F.3d 1177 (9th Cir. 2015)	5

### **STATUTES**

8 U.S.C. § 1326	2
18 U.S.C. § 3231	2
18 U.S.C. § 3553(a)	Passim
28 U.S.C. § 1254(1)	2
28 U.S.C. §1291	5
Pub. L. No. 108-21, 17 Stat. 650 (2003)	3

No. \_\_\_\_\_

---

IN THE SUPREME COURT OF THE UNITED STATES

---

RUBEN NAVARRETE-FELIX, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

---

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

Petitioner, Ruben Navarrete-Felix, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the Ninth Circuit Court of Appeals, Case No. 19-50044.

## **OPINION BELOW**

The unpublished Memorandum decision of the Ninth Circuit Court of Appeals, was issued on August 23, 2019, and is attached as Appendix A.

## **JURISDICTION**

The jurisdiction of this Court is invoked under 28 USC §1254(1). The matter seeks redress from an opinion of the Ninth Circuit Court of Appeals, dated August 23, 2019, and attached as Appendix A.

## **STATUTES INVOLVED**

Section 3553(a) of Title 18 is set forth in Appendix E.

## **STATEMENT OF CASE**

Ruben Navarrete-Felix is a Mexican citizen who was arrested in the United States near the Mexican border, charged with illegal re-entry into the U.S., and pled guilty to violating 8 U.S.C. § 1326.<sup>1</sup> The plea was pursuant to a “fast-track” plea agreement; that is, in exchange for Mr. Navarrete’s quick guilty plea and his waiver of additional rights, the government agreed to request a 4-level downward

---

<sup>1</sup> The district court had jurisdiction over this case pursuant to 18 U.S.C. § 3231, because the indictment charged Mr. Navarrete with a federal criminal offense.

departure from Mr. Navarrete’s offense level under the United States Sentencing Guidelines.<sup>2</sup> The government moved for the fast-track departure and recommended a 7-month sentence. Mr. Navarrete argued for a 6-month sentence.

Instead, because Mr. Navarrete had a recent, prior, conviction for illegal re-entry for which he received a 21-month sentence, the U.S. District Court Judge who sentenced him (the “District Judge”) followed his blanket policy of denying fast-track departures to the extent necessary to impose an increased punishment on this type of repeat offender. Rather than depart downward, the district court varied *upward* and sentenced Mr. Navarrete to 24 months of incarceration.

The District Judge abused its discretion by sentencing Mr. Navarrete pursuant to its blanket policy, because the resulting sentence was not an individualized determination of *all* factors set forth in 18 U.S.C. § 3553(a), including the history and characteristics of Mr. Navarrete and the need to avoid unwarranted sentencing disparities. The District Judge’s blanket policy is obvious from his statements at Mr. Navarrete’s sentencing hearing, his statements at other sentencing hearings,<sup>3</sup> and (most importantly) objective evidence that he always follows his policy of imposing longer sentences on repeat illegal re-entry offenders.

The chart below includes all known appeals involving repeat illegal-re-entry offenders who accepted fast-track dispositions and were sentenced by the District

---

<sup>2</sup> Such downward departures are provided for in the “Protect Act,” Pub. L. No. 108-21, §401(m), 117 Stat. 650 (2003).

<sup>3</sup> “[I]t’s incumbent upon me to fashion some kind of sentence which will tell him ‘we mean business. When we say ‘don’t come back[.]’” *United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir. 2009) (emphasis added).

Judge.<sup>4</sup> In all thirty-four cases, the District Judge denied the fast-track departure in whole or in part. In thirty-two of the thirty-four cases, the District Judge imposed a higher sentence than the defendant previously received for his or her most recent illegal re-entry conviction.

Case No. from Appx C	Prior Sentence	Sentencing Judge's Sentence	Case No. from Appx C	Prior Sentence	Sentencing Judge's Sentence
1.	8 months	16 months	19.	28 months	36 months
2.	180 days	33 months	20.	12 months	21 months
3.	36 months	50 months	21.	60 days	12 months
4.	30 months	36 months	22.	30 days	12 months
5.	34 months	58 months	23.	24 months	30 months
7.	30 months	33 months	24.	60 months	75 months
8.	6 months	37 months	25.	32 and 60 days	12 months
9.	12 months	18 months	26.	75 days and 24 months	36 months
10.	48 months	63 months	27.	4 and 8 months	24 months
12.	18 months	30 months	28.	18 months	36 months
13.	30 months	36 months	29.	6 months	24 months
14.	4 months	24 months	30.	95 months	119 months
15.	15 months	27 months	31.	15 months	24 months
16.	14 months	16 months	32.	75 days	10 months
17.	12 months and one day	16 months	33.	57 months	70 months
18.	105 days	12 months	34.	60 days	16 months

---

<sup>4</sup> The Ninth Circuit took judicial notice of the pleadings from other cases that provided the factual basis for this chart. *See Memorandum Decision*, attached as Appendix A, at 3 and Motion for Judicial Notice, attached as Appendix D. This chart was included in the AOB, and a more detailed summary of what the judicially noticed records reveal was appended to the AOB as Appendix B and is attached hereto as Appendix D.

*See Appendix D.* The pattern is obvious. In the two cases where the defendant received a lower sentence from the District Judge, there was an obvious reason why the blanket policy did not apply.<sup>5</sup>

The Ninth Circuit rejected this argument out of hand:

The record shows that the district court denied the fast-track reduction and imposed an upward variance based on Navarrete-Felix's particular criminal and immigration history, rather than a blanket policy. Moreover, the above-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The court did not abuse its discretion in imposing Navarrete-Felix's sentence. *See United States v. Rosales-Gonzales*, 801 F.3d 1177, 1184-85 (9th Cir. 2015).

See Memorandum Decision, Appendix A, at 2.<sup>6</sup> The Ninth Circuit (like the government in its briefs) did not find or assert that this District Court could or would look beyond a recidivist's criminal history in imposing sentence. Essentially, the Ninth Circuit held that this District Court's may focus solely on a defendant's criminal history in imposing sentence, and ignore the other Section 3553(a) factors.

---

<sup>5</sup> In one, a charge bargain capped the defendant maximum sentence to less than he had previously received. *See Appendix D* at A-33. In the other, the prior sentence was imposed after trial, so the two cases were not comparable. *See Appendix D* at A-32.

<sup>6</sup> The Ninth Circuit had jurisdiction over this appeal pursuant to 28 U.S.C. §1291, because it was an appeal from a final decision of a district court.

## **REASONS FOR GRANTING THE PETITION**

Deterrence and respect for the law are only two of the factors a district court must consider in imposing sentence. As this Court has observed, Section 3353(a) instructs the district court to consider:

(1) offense and offender characteristics; (2) the need for a sentence to reflect the basic aims of sentencing, namely, (a) “just punishment” (retribution), (b) deterrence, (c) incapacitation, (d) rehabilitation; (3) the sentences legally available; (4) the Sentencing Guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted disparities; and (7) the need for restitution. The provision also tells the sentencing judge to “impose a sentence sufficient, but not greater than necessary, to comply with” the basic aims of sentencing as set out above.

*Rita v. United States*, 551 U.S. 338, 347–48 (2007).

By condoning the District Court’s reliance on a single factor in sentencing, the Ninth Circuit has approved the district court’s reliance on a single factor in imposing sentence, *i.e.* a “blanket policy.” This approach conflicts with *Gall*, which instructs district courts to consider “all of the § 3553(a) factors to determine whether they support the sentence requested by a party” (or, in this case, both parties). 552 U.S. at 49-50. Accordingly, granting of the writ is appropriate. *See* Supreme Court Rule 10(c).

## **CONCLUSION**

For the foregoing reasons, Petitioner requests that this Court grant the petition for certiorari.

Dated: 10/4/19

Respectfully submitted,



---

Kenneth M. Miller  
Counsel for Petitioner  
Ruben Navarrete-Felix

# APPENDIX A

A-1

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

AUG 23 2019  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
v.  
RUBEN NAVARRETE-FELIX,  
Defendant-Appellant.

No. 19-50044  
D.C. No. 3:18-cr-04116-LAB-1

**MEMORANDUM\***

Appeal from the United States District Court  
for the Southern District of California  
Larry A. Burns, District Judge, Presiding

Submitted August 19, 2019\*\*

Before: SCHROEDER, PAEZ, and HURWITZ, Circuit Judges.

Ruben Navarrete-Felix appeals from the district court's judgment and challenges the 24-month sentence imposed following his guilty-plea conviction for being a removed alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Navarrete-Felix first contends that the district court abused its discretion by sentencing him in accordance with its blanket policy of imposing longer sentences on repeat illegal reentry offenders. The record shows that the district court denied the fast-track reduction and imposed an upward variance based on Navarrete-Felix's particular criminal and immigration history, rather than a blanket policy. Moreover, the above-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The court did not abuse its discretion in imposing Navarrete-Felix's sentence. *See United States v. Rosales-Gonzales*, 801 F.3d 1177, 1184-85 (9th Cir. 2015).

Navarrete-Felix also contends that the district court violated Federal Rule of Criminal Procedure 32 and due process by basing his sentence on unreliable facts and a policy disagreement with the government's fast-track policy. We review for plain error, *see United States v. Vanderwerfhorst*, 576 F.3d 929, 934 (9th Cir. 2009), and conclude that there is none. The record reflects that Navarrete-Felix was aware of all the facts relevant to the court's sentencing determination. *See United States v. Baldrich*, 471 F.3d 1110, 1114 (9th Cir. 2006) (describing the requirements of Rule 32). Moreover, Navarrete-Felix has not shown that his sentence was demonstrably based on any false or unreliable information or on the district court's alleged policy disagreement with the government. *See*

*Vanderwerfhorst*, 576 F.3d at 935-36.

Navarrete-Felix's unopposed motion for judicial notice is granted.

**AFFIRMED.**

# APPENDIX B

A-5

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

4 UNITED STATES OF AMERICA, )  
5 Plaintiff, ) No. 18-CR-4116-LAB  
6 v. ) January 28, 2019  
7 RUBEN NAVARRETE-FELIX, ) 2:31 p.m.  
8 Defendant. ) San Diego, California

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE LARRY ALAN BURNS  
UNITED STATES DISTRICT JUDGE

## 12 | APPEARANCES:

13 For the Plaintiff: UNITED STATES ATTORNEYS OFFICE  
14 By: DANIEL E. ZIPP, ESQ.  
880 Front Street  
San Diego, California 92101

16 For the Defendant: LAW OFFICE OF MICHAEL E. BURKE  
17 By: MICHAEL E. BURKE, ESQ.  
105 West F Street, Fourth Floor  
San Diego, California 92101

18 Court Interpreter: JUAN DAVILA-SANTIAGO

19 Court Reporter: CYNTHIA R. OTT, RDR, CRR  
20 District Court Clerk's Office  
333 West Broadway, Suite 420  
21 San Diego, California 92101  
cynthia.ott@casd.uscourts.gov

25 | Reported by Stenotype, Transcribed by Computer

1 SAN DIEGO, CALIFORNIA, JANUARY 28, 2019, 2:31 P.M.

2 \* \* \* \*

3 THE CLERK: Calling number 9 on the calendar,  
4 18-CR-4116, United States of America versus Ruben  
5 Navarrete-Felix.

6 MR. BURKE: Good afternoon, Your Honor. Michael Burke  
7 on behalf of Mr. Ruben Navarrete.

8 THE COURT: Good afternoon, Mr. Burke.

9 (Discussion off the record.)

10 THE COURT: Mr. Zipp, if you'll take a look in your  
11 file, I'd like to get more comprehensive information about  
12 Mr. Navarrete's immigration record. The probation report  
13 indicates that he's been removed on four occasions, and lists  
14 them at page 8. But my experience is that's not always the  
15 full tale of the tape, in terms of putouts.

16 MR. ZIPP: Yes, Your Honor, I'll take a look.

17 THE COURT: Good afternoon, Mr. Navarrete.

18 Mr. Navarrete is here, having pled guilty to being a  
19 removed alien who's found in the United States. A probation  
20 report was prepared in this case. I've read and reviewed it.

21 Have you, Mr. Burke, gone over the probation report  
22 with Mr. Navarrete?

23 MR. BURKE: Yes, Your Honor.

24 THE COURT: Here's what else I've read and looked at.  
25 Both sides filed sentencing summary charts. I've reviewed

1 those. And on behalf of Mr. Navarrete, Mr. Burke filed a  
2 sentencing memorandum, and I have read and considered that  
3 memorandum.

4 I also looked briefly at the plea agreement. Is there  
5 anything else that was filed or was in writing that I should  
6 have considered that I've not mentioned?

7 MR. BURKE: No, Your Honor.

8 THE COURT: Mr. Zipp, anything else?

9 MR. ZIPP: No, Your Honor.

10 THE COURT: So, Mr. Burke, I'll get right to the  
11 point. I am having some trouble with the four level  
12 recommendation for Fast Track. Interestingly, Mr. Guthrie was  
13 in here earlier -- were you here when his case was called?

14 MR. BURKE: Yes, I was, Your Honor.

15 THE COURT: Yeah, there was a guy with one misdemeanor  
16 conviction for illegal entry. And I was told he'd only been  
17 deported twice, and he got no Fast Track. And Mr. Guthrie  
18 explained to me, that was consistent with the government's Fast  
19 Track policy.

20 I have to confess to you, I don't know what their Fast  
21 Track policy is. Your client has a misdemeanor, 1325; a felony  
22 for identity theft, you know, 1028; a 1326 felony, where he got  
23 46 months; and another one where he got 21 months. And yet the  
24 government's offering four levels of Fast Track here. He's  
25 been deported on four occasions.

1           I don't -- maybe you have a better understanding of  
2 the way the Fast Track policy works than I do, because if it  
3 wasn't available to Mr. Guthrie's client, I don't know how it  
4 was possibly available to this fellow. That's beside the  
5 point. I'm having some trouble, personally, saying, I'm going  
6 to exercise discretion in favor of giving Fast Track in a case  
7 like this, with someone with what I consider to be a very  
8 serious recidivist record of coming into the United States  
9 illegally.

10           So I'm happy to hear from you, but I'm not necessarily  
11 on board with the four level departure. I'd like you and  
12 Mr. Zipp to speak to that.

13           MR. BURKE: Very well, Your Honor. I do think that a  
14 four level departure does lead to a range that's consistent  
15 with the 3553 factors, and what's reasonable under the  
16 circumstances of the case. And also, it's helpful in bringing  
17 the case to resolution.

18           Aside from the one prior contact --

19           THE COURT: Hold on a second. I don't understand the  
20 first part of the argument, because let's forget about the  
21 older immigration felonies. In 1991, for example, he had a  
22 misdemeanor. In '97, that was the identification fraud. In  
23 '99, he spent 46 months in custody for a felony reentry.  
24 Forget about all of those. Let's move up to 2012. He was back  
25 again. He got 21 months in prison. Now, the recommendation is

1 on, what, fourth or fifth felony, that he gets 7 months. So  
2 we're going 46, 21, down to 7? What happens next time, we  
3 apologize to him for all the past prosecutions and say, go in  
4 peace?

5 I don't follow here. Usually when you commit the same  
6 felony offense over and over again, the penalties go up, not  
7 down. So you say consistent with the 3553 factors in what way?

8 MR. BURKE: Well, Your Honor, aside from the one  
9 scoreable prior in this case for 1326 in 2012, his other  
10 priors, which are all nonscoreable, are all from the 20th  
11 century. There's not any of them -- this is the only one  
12 that's in this millennium.

13 And he's now 52 years of age, and with relatively  
14 minimal scoreable criminal history. In studies commissioned by  
15 the Sentencing Commission, the rate of recidivism is low for  
16 persons with low criminal history that are over 40. In his  
17 case, he's over 50.

18 THE COURT: He proves -- he proves to be the  
19 exception, though. He's been removed four times and what  
20 number of immigration conviction is this, five or four? Let's  
21 see.

22 MR. BURKE: Well, there's only one scoreable.

23 THE COURT: Yeah, forget about that. I'm talking  
24 about a guy that has a long-term history of ignoring the  
25 immigration laws of the United States and coming in.

1                   This is now his fifth immigration conviction, his  
2 third felony. So I'm more concerned about that. You know, the  
3 Sentencing Commission can assign what numbers it wants, and  
4 I'll pay attention to those. I'm required to. And I  
5 understand your point, but he's been coming in for 20 years.  
6 And you say, well, you know, he slows down, because he's  
7 getting older. Apparently not, because here he stands. Scotty  
8 didn't beam him in.

9                   MR. BURKE: Well, the whole series of nonscoreable  
10 priors are from age 32 and below.

11                  And sometimes you see a change in a person as they get  
12 older. With the exception of the one in 2012, which I think  
13 the sentence in that case was excessive. However, that being  
14 the only prior, and he's in Category II, I think he does fall  
15 in the category where, generally, there's a less likelihood of  
16 recidivism. And I think that fits with -- as I go into the  
17 profile as to Mr. Navarrete, in terms of his background.

18                  Mr. Navarrete-Felix is 52 years of age. He was born  
19 and raised in Mexicali, and it's the Valley of Mexicali in the  
20 outskirts of the city. His father died in a car accident over  
21 20 years ago. His mother is 76 years of age, still lives in  
22 Mexicali. He's the fourth of 12 sisters and brothers. They  
23 still remain in Mexicali. He remains close to his family.

24                  He's in good health. Doesn't suffer from substance  
25 abuse issues or mental health issues. He left school at eighth

1 grade, worked on his family's land, harvesting cotton and  
2 wheat. He's also worked as an auto mechanic in Indio  
3 and -- where he was repairing cars to be painted, among other  
4 things. And also packed grapes in Coachella, and has done  
5 landscaping in Palm Desert and Indio.

6 He is remorseful. He's done a great deal of thinking,  
7 and he does not plan to return without -- without permission.  
8 His future plan is to return to his family in Mexicali, and  
9 plans to work the family land there, and help his elderly  
10 widowed mother, stay close to his family. He does not want to  
11 return to the U.S. And considering all of the information  
12 before the Court militating in favor of leniency, including all  
13 the arguments set forth in our sentencing papers before the  
14 Court, and after appropriate balancing of the 3553 factors, we  
15 would recommend a custodial sentence of time served in this  
16 case.

17 THE COURT: Okay. Mr. Navarrete, what do you have to  
18 say on your own behalf this afternoon?

19 THE DEFENDANT: I promise I won't come back to this  
20 country.

21 THE COURT: Have you made that promise before? I'm  
22 just wondering.

23 THE DEFENDANT: It's the first time I promise.

24 THE COURT: Oh. When you got the 46 months, you mean?  
25 You say that you promised this before on the first time, or

1 this is the first time you're making the promise?

2 THE DEFENDANT: It's the first time I'm making that  
3 promise, a promise that I won't come back.

4 THE COURT: That surprises me, because, you know,  
5 you've been convicted of this offense before. And I'm  
6 surprised that you wouldn't have said, in sentencing before  
7 another judge on an earlier occasion, particularly when you got  
8 the long sentences, I get it, I understand, I'm not coming back  
9 anymore. You say you never made that promise to anyone else,  
10 any other judge in a circumstance like this one?

11 THE DEFENDANT: Just you. I didn't want to say  
12 anything to the other judge.

13 THE COURT: Ah, okay. All right. Anything else you  
14 want me to know?

15 THE DEFENDANT: No, that's all.

16 THE COURT: Mr. Zipp, what's the information on the  
17 immigration record beyond -- if any, beyond the four  
18 deportations shown in the --

19 MR. ZIPP: Yes, Your Honor, it looks like those four,  
20 it's a little unclear from the records from the '90s, but it  
21 appears that there were three other contacts before that.

22 THE COURT: Where he was arrested by border guards?

23 MR. ZIPP: Yes.

24 THE COURT: Okay. So a total of seven putouts, then?

25 MR. ZIPP: Yes, Your Honor.

1                   THE COURT: Okay. Again, I don't want to put you at  
2 odds with the recommendation that -- I don't know who made this  
3 deal. Let's see who signed this. Davis Loop, whoever that is.  
4 Davis Loop thought that 7 months was an appropriate sanction  
5 for a fifth immigration offense, the third felony, even though  
6 he's gotten 46 and 21 before, 21 in 2014.

7                   It doesn't seem appropriate to me. And Mr. Burke  
8 agrees with it. He says it's appropriate analysis, under 3553.  
9 I don't think so. I don't see how it advances deterrence. I  
10 mean, if I'm standing in Mr. Navarrete's position, and the  
11 sentences keep going down, I think what's the -- what's going  
12 to happen to me if I keep coming back, if the sentences keep  
13 getting reduced, reduced, reduced. The government keeps  
14 throwing concessions on. Did he get -- did he get Fast Track  
15 in Arizona in 2014?

16                  MR. ZIPP: I don't know that. I don't have those  
17 records, Your Honor.

18                  THE COURT: Did Davis Loop know that before he  
19 recommended Fast Track here?

20                  MR. ZIPP: I also don't know.

21                  THE COURT: It would have been incumbent on Davis Loop  
22 to try to find that out, right, since that's one of the  
23 important factors in granting that concession, at least the  
24 full 4 points?

25                  MR. ZIPP: Yes, Your Honor. I would just note that

1 the guidelines have changed since some of the times of these  
2 earlier sentences, so that the fact of his prior drug  
3 conviction is not scored as harshly as it was in the past.

4 THE COURT: No, I get that. But, you know, what do  
5 you say about the recidivism. I mean, here's a guy that's been  
6 put out seven times, five convictions now, five convictions.  
7 He keeps coming back. And the U.S. Attorney's Office keeps  
8 getting more forgiving toward the same thing.

9 I mean, are you serious about telling him, we don't  
10 want him back? Is the United States Government serious about  
11 saying, please don't come back anymore?

12 MR. ZIPP: Your Honor, we'd stand by the  
13 recommendation in our plea agreement for 7 months in this case.  
14 I don't want to go further down that road, so --

15 THE COURT: Okay. All right. The Court finds as  
16 follows: The base offense level here is 8. He has a prior  
17 illegal reentry conviction, in fact, several of them, that adds  
18 4, so we're up to 12.

19 He has accepted responsibility here. 2 points come  
20 off for that. The government is recommending that I depart  
21 four levels for Fast Track. I decline to do that here.

22 This is a fellow who's been put out now at least seven  
23 times, four formal deportations, three other apprehensions that  
24 resulted in some form of putout. This is his fifth -- his  
25 fifth immigration conviction. We don't know whether he's

1 gotten Fast Track before. I'm not assuming he has, but nobody  
2 checked, and that's an important consideration. And no one can  
3 tell me, in support of this recommendation for a sentence below  
4 the ordinary guidelines, that he deserves it because he hasn't  
5 gotten it before. I don't know that to be true.

6           And I just find the fact that he's come so many times,  
7 been put out so many times, it's resulted in numerous  
8 prosecutions to be totally inconsistent with giving him some  
9 kind of expedited -- credit for an expedited disposition. What  
10 else was he going to do? You know, he can fight this, if he  
11 wants. That's up to him. I don't impose any trial penalty, if  
12 he wanted to go to trial. But I just don't -- I don't think he  
13 fits in with the -- in my judgment, with somebody who deserves  
14 4 levels off for expedited disposition on the fifth immigration  
15 felony. I just don't think that that's so.

16           Here's part of my thinking, Mr. Zipp, which you might  
17 take back to Davis Loop. There are other factors that I have  
18 to consider in conjunction with the guideline calculations, and  
19 those are under 3553. Deterrence is one. A sentence of 7  
20 months here, when he's done 46 months and 21 months before?  
21 Can anybody make an argument that that advances deterrence,  
22 that somehow Mr. Navarrete is going to say, oh, man, that hurt,  
23 you dialed it up now. The consequences are too great, I'm  
24 going to refrain from doing the bad stuff that's gotten me in  
25 trouble before. I don't think so.

1                   Does it promote respect for the law? I doubt it. If  
2 we walked out to Front and Broadway, and said, okay, this guy  
3 is on his fifth immigration offense, and here are the prior  
4 sentences, what would make sense. Like, 48 months or 30  
5 months, or how about 7 months. I doubt we'd get many takers  
6 from the man on the street saying, yeah, let's give him 7, that  
7 sounds like the trick. It just seems so foreign, when the  
8 benchmark has been higher up to this point to go down to this  
9 level.

10                  And I don't think it's just punishment. I just don't.  
11 We can talk about scoring, and things that have fallen off the  
12 calculus from the sentencing guidelines point of view. What's  
13 salient here is, this is the fifth immigration conviction, and  
14 he keeps coming back, and he's done so for 20 years. So for  
15 those reasons, I decline to give a Fast Track departure. I  
16 give it 98 percent of the time. I've tried to make an  
17 individualized determination here. I don't have a policy  
18 against giving it.

19                  If somebody wants to run the numbers, they can verify  
20 the high percentage of times that I grant it without any  
21 argument. But this just doesn't make sense to me. And I'm not  
22 going to exercise my discretion the way Davis Loop exercised  
23 his. Turning -- so I find that the guidelines range is 8 to 14  
24 months.

25                  Turning to the 3553 factors, what's aggravating here,

1 of course, is what I've dwelled on, which is how many times  
2 this fellow has come over, and over what period of time.  
3 Mr. Burke is, you know, right to point out that his criminal  
4 record is old. I saw that he was a lawful permanent resident  
5 at one point. He lost that status because of a drug felony  
6 back in the '90s.

7           Yeah, I don't think -- you know, that doesn't resonate  
8 with me, in terms of the, you know, need for punishment. He's  
9 been punished for that, and the collateral consequence was he  
10 couldn't stay in the United States. But that didn't stop him.  
11 He keeps coming back. And he's here, first and foremost,  
12 because he keeps committing immigration offenses, and he hasn't  
13 been deterred.

14           The question is, you know, is 14 months adequate  
15 deterrence? I find that it's not. I find that given this  
16 record of recidivism, and, again, the fact that this is the  
17 fifth conviction, that actually a variance is in order. His  
18 guidelines top out at 14 months. I note that that is below the  
19 last sentence he got in 2014, which was 21 months, and well  
20 below the sentence that he got the first time he was convicted  
21 of this offense, which was 46 months.

22           I don't use the 46 months as a benchmark, because as  
23 the parties have pointed out to me, the guidelines have  
24 changed. So it's not a benchmark in a strict sense, but it is  
25 indicative that 46 months wasn't adequate to deter him, because

1 he's come back many times since then. So if that's the case, I  
2 can't really find that 14 months is adequate to deter him  
3 either.

4 I don't know what the magic number is. I'm hoping  
5 that a 24-month sentence, which is a 10-month variance will do  
6 the trick. Mr. Burke points out, he's older now. He says  
7 that, for the first time in all of these immigration  
8 proceedings, that he's promised that he won't come back. We'll  
9 see. We'll see if he keeps his promise.

10 But I find that a 10-month variance upward to 24  
11 months is necessary under 3553, to deter him, number one, to  
12 promote respect for the law, number two, and is just punishment  
13 in light of his immigration record and his recidivism.

14 So I impose 24 months. I also impose a 3-year term of  
15 supervised release. He -- as I said, he's promised that he's  
16 not going to come back. I hope that's the case, because there  
17 will be a consequence if he does come back within 3 years. And  
18 the consequence will be that he'll be subject to a sanction and  
19 subject to additional time in custody.

20 The two conditions of supervised release, once he  
21 finishes the custodial portion of the sentences are these.  
22 One, he's not to come back to the United States. He's to keep  
23 the promise that he made today. Number two, he's not to  
24 violate any United States law.

25 And I do find in Mr. Navarrete's case that the

1 imposition of supervised release will be a deterrent to him,  
2 and it mitigates the sentence that I would otherwise impose on  
3 the front end to achieve deterrence. I think the combination  
4 of this and a 24-month sentence is the most effective way to  
5 deter him.

6 No fine is imposed. I do impose a hundred dollar  
7 penalty assessment. Mr. Navarrete, you have a right to appeal.  
8 If you think I made the wrong decision, or the sentence is just  
9 too long, or I've just skipped by, you know, some required  
10 recital, then you can appeal. And a higher court with three  
11 judges will look at the whole record in this case, what your  
12 lawyer said, what Mr. Zipp said, what you said, and what I've  
13 said. And if I've made a mistake, they'll send it back and  
14 have me redo it.

15 You have to know this today, you have 14 days to make  
16 up your mind on whether you want to appeal. And if you do, you  
17 tell Mr. Burke, and he'll help you file the paperwork. But the  
18 time clock starts running today. You have to make that  
19 decision in the next 14 days. Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. Anything else, Mr. Burke?

22 MR. BURKE: Just since the sentence is above the high  
23 end of the guideline range recommended by the government, as  
24 the Court notes, he does have a right to appeal. And so I just  
25 wanted to note for the record, our objection on substantive

1 reasonableness.

2                   THE COURT: Okay. I think that's preserved  
3 automatically without the objection, but your objection is  
4 noted.

5                   MR. BURKE: Thank you, Your Honor.

6                   THE COURT: Okay. That's all.

7 (The proceedings concluded at 2:52 p.m., January 28, 2019.)

8                   COURT REPORTER'S CERTIFICATE

9  
10                  I, CYNTHIA R. OTT, Official Court Reporter, United States  
11 District Court, Southern District of California, do hereby  
12 certify that pursuant to 28 U.S.C. §753 the foregoing is a  
13 true, complete and correct transcript of the stenographically  
14 reported proceedings had in connection with the above-entitled  
15 matter and that the transcript page format is in conformance  
16 with the regulations of the Judicial Conference of the United  
17 States.

18  
19                  DATED at San Diego, California, March 21, 2019.

20  
21                  \_\_\_\_\_*/s/ CYNTHIA R. OTT*\_\_\_\_\_  
22                  CYNTHIA R. OTT, RDR, CRR  
23  
24  
25

# APPENDIX C

**NO. 19-50044**

---

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

---

**UNITED STATES OF AMERICA,**  
Plaintiff-Appellee,  
v.  
**RUBEN NAVARRETE-FELIX,**  
Defendant-Appellant.

---

---

Appeal from the United States District Court  
For the Southern District of California  
Honorable Larry A. Burns, Judge Presiding

---

---

**MOTION FOR JUDICIAL NOTICE AND SUPPORTING DECLARATION**

---

---

**KENNETH M. MILLER**  
107 Avenida Miramar, Suite C  
San Clemente, California 92672-6713  
Telephone: (949) 388-3440  
Attorney for Defendant-Appellant

## **MOTION FOR JUDICIAL NOTICE**

Pursuant to Federal Rule of Evidence 201, Appellant Ruben Navarrete-Felix hereby requests that the Court take judicial notice of the following publicly filed documents in support of Appellants' Opening Brief:

1. Judgment, *U.S. v. Zambrano-Ruiz*, Case No. 12-CR-1131, D. Ariz., ECF No. 22 (Exhibit A);
2. Judgment, *U.S. v. Escoboza-Soto*, Case No. 16-MJ-11251, D. Ariz., ECF No.7 (Exhibit B);
3. Judgment, *U.S. v. Bustos-Gutierrez*, Case No. 13-CR-894, S.D. Tex., ECF No.24 (Exhibit C);
4. Judgment, *U.S. v. Guevara-Lopez*, Case No. 07-CR-910, W.D. Tex., ECF No.24 (Exhibit D);
5. Judgment, *U.S. v. Ramirez-Reyes*, Case No. 15-CR-103, S.D. Cal., ECF No.26 (Exhibit E);
6. Judgment, *U.S. v. Orozco-Uranga*, Case No. 04-CR-2184, S.D. Cal., ECF No.24 (Exhibit F);
7. Docket Sheet (or, Clerk's Record), *U.S. v. Orozco-Uranga*, Case No. 04-CR-2184, S.D. Cal. (Exhibit G);
8. Judgment, *U.S. v. Guierrez-Torres*, Case No. 14-CR-3312, S.D. Cal., ECF No.27 (Exhibit H);
9. Judgment, *U.S. v. Placer-Cruz*, Case No. 09-CR-2103, S.D. Cal., ECF No.19 (Exhibit I);
10. Judgment, *U.S. v. Anaya-Granados*, Case No. 11-CR-1155, S.D. Cal., ECF No.21 (Exhibit J);
11. Judgment, *U.S. v. Gonzalez-Favela*, Case No. 12-CR-1420, S.D. Cal., ECF No.26 (Exhibit K);

12. Judgment, *U.S. v. Coutino-Lopez*, Case No. 12-CR-1723, D. Ariz., ECF No.24 (Exhibit L);
13. Information, *U.S. v. Coutino-Lopez*, Case No. 15-CR-2657, S.D. Cal., ECF No.10 (Exhibit M);
14. Superseding Information, *U.S. v. Coutino-Lopez*, Case No. 15-CR-2657, S.D. Cal., ECF No.17 (Exhibit N);
15. Judgment, *U.S. v. Heredia-Pantaleon*, Case No. 12-CR-4207, S.D. Cal., ECF No.22 (Exhibit O);
16. Judgment and Commitment Order, *U.S. v. Thomas*, Case No. 12-CR-354, C.D. Cal., ECF No.28 (Exhibit P);
17. Judgment, *U.S. v. Perez-Rios*, Case No. 14-CR-1963, S.D. Cal., ECF No.24 (Exhibit Q);
18. Information, *U.S. v. Perez-Rios*, Case No. 14-CR-1963, S.D. Cal., ECF No.9 (Exhibit R);
19. Judgment, *U.S. v. Rosales-Gonzales*, Case No. 12-CR-2437, S.D. Cal., ECF No.22 (Exhibit S);
20. Judgment, *U.S. v. Bentura-Ortiz*, Case No. 13-CR-108, W.D. La., ECF No.25 (Exhibit T);
21. October 14, 2014 Sentencing Transcript Excerpt, *U.S. v. Gomez-Perez*, S.D. Cal., Case No. 14-CR-1892 (Exhibit U);
22. April 13, 2015 Sentencing Transcript Excerpt, *U.S. v. Corona-Tamiriz*, Case No. 15-CR-236, S.D. Cal. (Exhibit V);
23. Judgment, *U.S. v. Estrada-Martinez*, Case No. 12-CR-3769, S.D. Cal., ECF No.23 (Exhibit W);
24. Judgment, *U.S. v. Villa-Sosa*, Case No. 11-CR-2661, S.D. Cal., ECF No.19 (Exhibit X);

25. Complaint, Minutes and Judgment, *U.S. v. Carreon-Ortiz*, Case No. 03-PO-1076, D. Ariz., ECF No.1 (Exhibit Y);
26. Judgment, *U.S. v. Ortiz-Sanchez*, Case No. 07-CR-149, D. Idaho, ECF No.24 (Exhibit Z);
27. Complaint, Judgment and Minutes, *U.S. v. Navarro-Valle*, Case No. 12-PO-31303, D. Ariz., ECF No.1 (Exhibit AA);
28. Judgment, *U.S. v. Navarro-Valle*, Case No. 12-CR-2953, D. N.M., ECF No.18 (Exhibit BB);
29. Judgment, *U.S. v. Dominguez-Garcia*, Case No. 07-CR-1565, S.D. Cal., ECF No.12 (Exhibit CC);
30. Complaint, Minutes, Judgment and Plea Agreement, *U.S. v. Dominguez-Garcia*, Case No. 13-PO-24237, D. Ariz., ECF No.1 (Exhibit DD);
31. September 20, 2013 Sentencing Hearing Transcript Excerpt, *U.S. v. Hernandez-Hernandez*, Case No. 13-CR-2000, S.D. Cal. (Exhibit EE);
32. Judgment, *U.S. v. Lara-Renteria*, Case No. 09-CR-2342, S.D. Cal., ECF No.22 (Exhibit FF);
33. Judgment, *U.S. v. Zamudio-Dimas*, Case No. 12-CR-1106, S.D. Cal., ECF No.27 (Exhibit GG);
34. Judgment, *U.S. v. Hernandez-Alvarez*, Case No. 04-CR-1143, D. Ariz., ECF No.34 (Exhibit HH);
35. Amended Judgment, *U.S. v. Montes-Ruiz*, Case No. 05-CR-238, S.D. Cal., ECF No.14 (Exhibit II);
36. Judgment, *U.S. v. Jaramillo-Garcia*, Case No. 04-PO-2301, D. Ariz., ECF No.1 (Exhibit JJ);
37. Docket Sheet (or Clerk's Record), *U.S. v. Cruz-Valdivia*, Case No. 03-CR-172, D. Col. (Exhibit KK);

38. Judgment, *U.S. v. Gutierrez-Sanchez*, Case No. 02-CR-1434, S.D. Cal., ECF No.10 (Exhibit LL).

The Court may take judicial notice of any matter “not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). These documents were publicly filed in United States District Courts and are adjudicative facts as they are simply the facts of that particular case, *i.e.*, the charge of which those defendants were convicted and the sentence they received for those convictions. *See* Fed. R. Evid. 201’s advisory committee’s note. Fed. R. Evid. 201(b) specifically contemplates “records of the court” such as these pleadings. *Id.*

Appellant is appealing his sentence imposed by the Southern District of California on the grounds, *inter alia*, that the sentencing judge had an impermissible blanket policy of declining “fast-track” departures pursuant to United States Sentencing Guideline § 5K3.1, to the extent necessary to impose a longer sentence than the defendant previously received for the same or similar offense. The documents of which Appellant seeks judicial notice will establish the sentence other defendants appearing before this sentencing judge previously received and the crime for which they received it. Therefore, they are relevant to establishing the sentencing judge’s blanket policy of imposing a harsher sentence when they were later sentenced again for a similar crime. *See United States v. Gonzalez*, 502 Fed.Appx. 665, 667 (9<sup>th</sup> Cir. 2012) (appellate court took judicial notice of other cases over relevant time period in determining district judge had improper “blanket policy”). A comparison between the sentences received by these defendants, and the later, longer sentences they received from the District Judge for similar offenses (that Appellant contends reflect an impermissible blanket policy) is contained in Appendix B to Appellant’s Opening Brief.

Accordingly, Appellant requests that the Court take judicial notice of the district court documents attached hereto as Exhibits A-LL.

DATED: May 10, 2019  
San Clemente, California

Respectfully submitted

By: /s/ Kenneth M. Miller  
KENNETH M. MILLER  
Attorney for Appellant

## DECLARATION OF KENNETH M. MILLER

I Kenneth M. Miller declare as follows:

1. I am an attorney licensed to practice before this Court and I am counsel of record for Appellant Ruben Navarrete-Felix. I have personal knowledge of the following.
2. Appellant's primary argument on appeal is that the district judge that sentenced him (the "District Judge") abused his discretion because he imposed the sentence pursuant to a blanket policy of always imposing a sentence on repeat illegal re-entry offenders that is longer than the last sentence the defendant received for the same or similar offense.
3. In an attempt to establish this blanket policy, I attempted to locate all other instances where this district judge imposed a sentence under circumstances similar to Mr. Navarrete's, and then determine if he invariably imposed a longer sentence than the one that defendant last received for a similar crime.
4. Accordingly, I did a Westlaw search in the Ninth Circuit's database for the judge's initials ("LAB") and the phrase "fast track." That revealed 51 cases. Of those, 34 involved appeals from defendants of a sentence imposed by the District Judge for illegal re-entry in violation of 8 U.S.C. § 1326, and where the government also moved for a "fast track" downward departure.
5. To determine whether the District Judge invariably imposed a higher sentence than the defendant previously received for a similar crime, I attempted to obtain the "Rap Sheet Summary Chart" that is usually attached to the criminal complaint in illegal re-entry cases in the Southern District of California. However, those charts are not publicly available on Pacer, they are not available at the public Pacer terminal in the Federal Courthouse in San Diego, and the government (through the Chief of the Appellate Unit of

the San Diego's United States' Attorney's Office) would not stipulate to an Order that they be released to me.

6. I did not want to seek an extension of the time necessary to file Appellant's Opening Brief because Mr. Navarrete has been in custody since August 2018, he has already served more time in custody than the government recommended at his sentencing, and his projected release for the 24-month sentence he actually received is only a year away. Accordingly, and at the suggestion of the above-referenced Assistant United States Attorney, I did nationwide Pacer searches for the defendants whose cases I had found on Westlaw and identified their most recent case for illegal re-entry. I then reviewed the docket and Judgment (where available) for those cases to determine the sentence those defendants received for their most recent, prior, illegal re-entry offense. I then created a chart reflecting both the sentence imposed by this District Judge that they appealed, and the earlier sentence for illegal re-entry. That chart that is attached as Appendix B to the concurrently submitted Appellant's Opening Brief.

I swear under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 10<sup>th</sup> day of May in San Clemente, California.

/s/ Kenneth M. Miller  
KENNETH M. MILLER  
Attorney for Appellant

# APPENDIX D

## APPENDIX B

(CHART COMPARING DISTRICT JUDGE'S SENTENCES FOR REPEAT ILLEGAL RE-ENTRY OFFENDERS WITH THAT OFFENDER'S PRIOR SENTENCE FOR ILLEGAL RE-ENTRY)

	Appellate cases where the District Judge imposed sentence on repeat illegal re-entry offenders who also sought fast-track downward departure	Sentence imposed by the District Judge for repeat illegal re-entry offender in cited appellate cases	Immediate Prior Sentence imposed by this or another district judge for same Defendant's prior §§ 1325 or 1326 violation	Comments
1	US v Zambrano-Ruiz ---Fed.Appx--- 2019WL1568630 (9 <sup>th</sup> Cir. 4/11/19) 18CR1082-LAB	16 months	8 months (11/7/12)  RJN <sup>1</sup> at 2 (Exhibit A)	
2	US v. Escoboza-Soto, 754 Fed.Appx. 626 (Mem.) (9 <sup>th</sup> Cir. 2/22/19) 18-cr-01099-LAB	33 months	180 days (12/28/16)  RJN at 6 (Exhibit B)	
3	US v. Bustos-Gutierrez, 749 Fed.Appx. 620 (Mem.) (9 <sup>th</sup> Cir. 1/23/19) 17-cr-03392-LAB	50 months	36 months (2/20/14)  RJN at 9 (Exhibit C)	
4	US v. Guevara-Lopez, 748 Fed.Appx. 168 (Mem.) (9 <sup>th</sup> Cir. 1/17/19) 17-cr-03465-LAB	36 months	30 months (3/26/08)  RJN at 16 (Exhibit D)	
5	US v. Ramirez-Reyes, 744 Fed.Appx. 429 (Mem.) (9 <sup>th</sup> Cir. 12/3/18) 17-cr-03166-LAB	58 months	34 months (5/12/15)  RJN at 23 (Exhibit E)	
6	US v. Orozco-Uranga, 727 Fed.Appx. 339 (Mem.) (9 <sup>th</sup> Cir. 6/15/18) 17-cr-01262-LAB	41 months	46 months (9/15/05)  RJN at 27 (Exhibit F)	Defendant went to trial on prior offense.  RJN at 34 (Exhibit G)
7	US v. Gutierrez-Torres,	33 months	30 months (3/4/15)	

<sup>1</sup> "RJN" refers to the concurrently filed Exhibits in Support of Request for Judicial Notice, which contains court documents demonstrating Defendant's prior sentence and statute of conviction.

	709 Fed.Appx. 502 (9 <sup>th</sup> Cir. 1/19/18) 16-cr-02756-LAB		RJN at 39 (Exhibit H)	
8	US v. Placeres-Cruz, 710 Fed.Appx. 297 (Mem.) (9 <sup>th</sup> Cir. 1/19/18) 16-cr-02732-LAB	37 months	6 months (8/3/09)  RJN at 44 (Exhibit I)	
9	US v. Anaya-Granados, 706 Fed.Appx. 410 (9 <sup>th</sup> Cir. 12/14/17) 16-cr-02836-LAB	18 months	12 months (5/19/11)  RJN at 49 (Exhibit J)	
10	US v. Gonzalez-Favela, 693 Fed.Appx. 558 (9 <sup>th</sup> Cir. 7/3/17) 12-cr-01420-LAB	63 months	48 months (9/20/12)  RJN at 54 (Exhibit K)	
11	US v. Coutino-Lopez, 689 Fed.Appx. 872 (9 <sup>th</sup> Cir. 4/24/17) 15-cr-02657-LAB	24 months	30 months (1/17/13)  RJN at 58 (Exhibit L)	Superseding information in earlier case charged only violation of § 1326(a), so District Judge limited to imposing stat-max sentence of 24 months. <i>See</i> RJN at 62-65 (Exhibits M and N).
12	US v. Heredia-Pantaleon, 677 Fed.Appx. 395 (9 <sup>th</sup> Cir. 2/21/17) 15-cr-01975-LAB	30 months	18 months (2/6/13)  RJN at 68 and (Exhibit O)	
13	US v. Thomas, 674 Fed.Appx. 752 (9 <sup>th</sup> Cir. 1/23/17) 15-cr-02530-LAB	36 months	30 months (7/26/12)  RJN at 70 (Exhibit P)	
14	US v. Perez-Rios, 670 Fed.Appx. 500 (9 <sup>th</sup> Cir. 11/2/16) 15-cr-02562-LAB	24 months	Time served, 4 months (10/28/14)	

			RJN at 76 and 80 (Exhibits Q and R)	
15	US v. Rosales-Gonzales 801 F.3d 1177 (9 <sup>th</sup> Cir. 2015) 14-cr-523-LAB	27 months	15 months (11/13/12)  RJN at 84 (Exhibit S)	
16	US v. Bentura-Ortiz, 654 Fed.Appx. 313 (9 <sup>th</sup> Cir. 6/20/16) 14-cr-02954-LAB	16 months	14 months (10/24/13)  RJN at 89 (Exhibit T)	
17	US v. Gomez-Perez, 633 Fed.Appx. 646 (9 <sup>th</sup> Cir. 1/28/16) 14-cr-01892-LAB	16 months	12 months and one day (5/8/13)  RJN at 96 (Exhibit U)	
18	US v. Corona-Tamiriz, 632 Fed.Appx. 344 (9 <sup>th</sup> Cir. 1/25/16) 15-cr-00236-LAB	12 months	105 days (date unknown)  RJN at 103 (Exhibit V)	
19	US v. Martinez-George, 624 Fed.Appx. 615 (9 <sup>th</sup> Cir. 12/16/15) 14-cr-00843-LAB	36 months	28 months (date not specified in Memo. Dispo.)  624 Fed. Appx. 615	
20	US v. Estrada-Martinez, 624 Fed.Appx. 576 (9 <sup>th</sup> Cir. 12/15/15) 14-cr-02509-LAB	21 months	12 months (12/10/13)  RJN at 106 (Exhibit W)	
21	US v. Villa-Sosa, 615 Fed.Appx. 449 (9 <sup>th</sup> Cir. 9/1/15) 15-cr-00529-LAB	12 months	60 days (8/4/11)  RJN at 109 (Exhibit X)	
22	US v. Carreon-Ortiz, 602 Fed.Appx. 403 (9 <sup>th</sup> Cir. 5/18/15) 14-cr-02521-LAB	12 months	30 days (1/14/03)  RJN at 118 (Exhibit Y)	
23	US v. Uribe, 596 Fed.Appx. 563 (9 <sup>th</sup> Cir. 3/5/15) 13-cr-02150-LAB-1	30 months	24 months (date not specified in Memo. Dispo.)  596 Fed. Appx. 563	
24	US v. Ortiz-Sanchez, 590 Fed.Appx. 718 (9 <sup>th</sup> Cir. 1/27/15) 14-cr-00044-LAB	75 months	60 months (1/9/08)  RJN at 122 (Exhibit Z)	

25	US v. Navarro-Valle, 585 Fed.Appx. 701 (9 <sup>th</sup> Cir. 11/25/14) 13-cr-02442-LAB	12 months	32 days (12/18/12) 60 days (8/10/12) RJN at 133 and 129 (Exhibits AA and BB)	
26	US v Dominguez-Garcia 586 Fed. Appx. 313 (9 <sup>th</sup> Cir. 12/2/14) 13cr2073-LAB	36 months	75 days (4/11/13)  24 months (8/3/07)  RJN at 142 and 137 (Exhibits CC and DD)	
27	US v. Hernandez-Hernandez, 585 Fed.Appx. 562 (9 <sup>th</sup> Cir. 10/23/14) 13-cr-02000-LAB-1	24 months	4 and 8 months (2010)  RJN at 150 (Exhibit EE)	
28	US v. Lara-Renteria, 585 Fed.Appx. 561 (9 <sup>th</sup> Cir. 10/23/14) 13-cr-01736-LAB-1	36 months	18 months (8/13/09)  RJN at 155 (Exhibit FF)	
29	US v. Zamudio-Dimas, 584 Fed.Appx. 568 (9 <sup>th</sup> Cir. 8/18/14) 13-cr-00911-LAB	24 months	6 months (6/12/12)  RJN at 160 (Exhibit GG)	
30	US v. Hernandez-Alvarez, 574 Fed.Appx. 785 (9 <sup>th</sup> Cir. 5/21/14) 13-cr-01205-LAB	119 months	95 months (4/7/06)  RJN at 162 (Exhibit HH)	
31	US v. Montes-Ruiz, 745 F.3d 1286 (9 <sup>th</sup> Cir. 3/21/14) 07-cr-01164-LAB-1	24 months	15 months (6/28/05)  RJN at 169 (Exhibit II)	
32	US v. Jaramillo-Garcia, 552 Fed.Appx. 756 (9 <sup>th</sup> Cir. 1/23/14) 13-cr-02498-LAB	10 months	75 days (5/28/04)  RJN at 173 (Exhibit JJ)	
33	US v. Cruz-Valdivia, 526 Fed.Appx. 735 (9 <sup>th</sup> Cir. 4/29/13) 11-cr-05188-LAB-1	70 months	57 months (appears to be 1/9/04)  RJN at 177 (Exhibit KK)	

34	US v. Gutierrez-Sanchez, 587 F.3d 904 (9 <sup>th</sup> Cir. 11/18/09) 08-cr-00759-LAB-1	16 months	60 days (6/27/02)  RJN at 182 (Exhibit LL)	18 USC § 1001 case that the District Judge sentenced as though a § 1326 case because admissions in plea agreement
	US v. Gutierrez-Sanchez, 559 F.3d 1088 (9 <sup>th</sup> Cir. 3/23/09) 08-cr-00759-LAB-1	16 months	Same  RJN at 182	Same

# APPENDIX E

## § 3553. Imposition of a sentence

### Currentness

**(a) Factors to be considered in imposing a sentence.**--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

**(1)** the nature and circumstances of the offense and the history and characteristics of the defendant;

**(2)** the need for the sentence imposed--

**(A)** to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

**(B)** to afford adequate deterrence to criminal conduct;

**(C)** to protect the public from further crimes of the defendant; and

**(D)** to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

**(3)** the kinds of sentences available;

**(4)** the kinds of sentence and the sentencing range established for--

**(A)** the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--

**(i)** issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

**(ii)** that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

**(B)** in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

**(5)** any pertinent policy statement--

**(A)** issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

**(B)** that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.<sup>1</sup>

**(6)** the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

**(7)** the need to provide restitution to any victims of the offense.

No. \_\_\_\_\_

---

IN THE SUPREME COURT OF THE UNITED STATES

---

RUBEN NAVARRETE-FELIX--Petitioner

v.

UNITED STATES OF AMERICA--Respondent

---

PROOF OF SERVICE

I, Kenneth M. Miller, do swear that on this date, October 4, 2019, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States Mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third party commercial carrier for delivery within 3 calendar days.

That names and addresses are as follows:

Hon. Noel Francisco  
Solicitor General—United States  
950 Pennsylvania Ave. NW  
Washington DC 20530

I declare under penalty of perjury of the United States of America that the foregoing is true and correct.

Executed this 4 day of October 2019.



---

Kenneth M. Miller