

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MIGUEL JILBERTO VAZQUEZ-CHAVARRIA,

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**

United States Court of Appeals
Fifth Circuit

FILED

September 26, 2019

Lyle W. Cayce
Clerk

No. 19-10060
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MIGUEL JILBERTO VAZQUEZ-CHAVARRIA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-175-1

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

On July 2, 2015, Miguel Jilberto Vazquez-Chavarria was discovered by immigration authorities while in state custody. An immigration detainer was placed on him, but his prosecution for illegal reentry into the United States following deportation did not begin until approximately three years later, after he had served his state sentence. Following his guilty plea on the illegal reentry charge, Vazquez-Chavarria moved for a downward departure pursuant

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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to Application Note 7 of the Commentary to U.S.S.G. § 2L1.2. The district court denied the departure motion and, varying upwardly from the advisory guidelines range, imposed a 72-month sentence of imprisonment. Vazquez-Chavarria appeals, contending that his sentence is substantively unreasonable because it did not give enough weight to the delay in the commencement of his federal prosecution.

Our review of a district court's sentencing decision is limited to determining whether a sentence is reasonable. *Gall v. United States*, 552 U.S. 38, 46 (2007). Generally, we review the substantive reasonableness of an above-guidelines sentence for abuse of discretion. *United States v. Key*, 599 F.3d 469, 475 (5th Cir. 2010). Although Vazquez-Chavarria argues that an objection is not required to preserve the issue, our precedent permits the application of plain error review where, as here, the defendant fails to object to his sentence. *See United States v. Peltier*, 505 F.3d 389, 390-92 (5th Cir. 2007). Because Vazquez-Chavarria's substantive reasonableness challenge fails even under the ordinary abuse of discretion standard, we will apply the more lenient standard. *See United States v. Rodriguez*, 602 F.3d 346, 361 (5th Cir. 2010).

A non-guidelines sentence must be "reasonable under the totality of the relevant statutory factors." *United States v. Brantley*, 537 F.3d 347, 349 (5th Cir. 2008) (internal quotation marks and citation omitted). "A non-Guideline sentence unreasonably fails to reflect the statutory sentencing factors where 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). "In making this determination, we must 'give due deference to the district court's decision that the [18 U.S.C.]

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§ 3553(a) factors, on a whole, justify the extent of the variance.” *United States v. Gerezano-Rosales*, 692 F.3d 393, 401 (5th Cir. 2012) (quoting *Gall*, 552 U.S. at 51).

The record reflects that the district court considered and rejected Vazquez-Chavarria’s request for sentencing leniency based on the delay in the commencement of his federal prosecution. Further, in determining that an upward variance was warranted, the district court took into account the advisory guidelines sentencing range, the § 3553(a) sentencing factors, and the information set forth in the Presentence Report concerning Vazquez-Chavarria’s criminal history. The district court expressly considered Vazquez-Chavarria’s repeated failure to abide by the immigration laws, his commission of offenses involving violence against women, and the need to impose a sentence that would protect the public from future crimes of the defendant and provide adequate deterrence.

The record thus does not reflect that the district court failed to account for a factor that should have received significant weight, gave significant weight to an irrelevant or improper factor, or committed a clear error of judgment in balancing the § 3553(a) factors. *See Smith*, 440 F.3d at 708. Vazquez-Chavarria’s arguments amount to a request for this court to reweigh the § 3553(a) factors, which we will not do. *See Gall*, 552 U.S. at 51.

Moreover, while the 72-month sentence in this case is nine months over the top of the advisory guidelines sentencing range, we have upheld larger variances or departures. *See e.g., United States v. Rhine*, 637 F.3d 525, 526, 529-30 (5th Cir. 2011); *Key*, 599 F.3d at 475-76; *United States v. Smith*, 417 F.3d 483, 492-93 (5th Cir. 2005). As a review of the record reveals no abuse of discretion, 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-00175-O(01)
U.S. Marshal's No.: 28661-280
MIGUEL JILBERTO VAZQUEZ-CHAVARRIA Alex C. Lewis, Assistant U.S. Attorney
Taylor Brown, Attorney for the Defendant

On September 27, 2018 the defendant, MIGUEL JILBERTO VAZQUEZ-CHAVARRIA, entered a plea of guilty as to Count One of the Indictment filed on July 24, 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	July 1, 2015	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 July 24, 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 January 7, 2019.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed January 8, 2019.

Judgment in a Criminal Case
Defendant: MIGUEL JILBERTO VAZQUEZ-
CHAVARRIA
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IMPRISONMENT

The defendant, MIGUEL JILBERTO VAZQUEZ-CHAVARRIA, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Seventy-Two (72) months** as to Count One of the Indictment filed on July 24, 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 **Three (3) years** as to Count One of the Indictment filed on July 24, 2018.

While on 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 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,
- (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.

Judgment in a Criminal Case
Defendant: MIGUEL JILBERTO VAZQUEZ-
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In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

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

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

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;

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

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

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

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Defendant: MIGUEL JILBERTO VAZQUEZ-
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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