

No. 20-

IN THE
Supreme Court of the United States

ENRIQUE A. ECHEVERRIA-BENITEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

APPENDIX VOLUME

JAMES SCOTT SULLIVAN
LAW OFFICES OF J. SCOTT SULLIVAN
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APPENDIX A

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

No. 18-41012
c/w No. 18-41014
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 23, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ENRIQUE A. ECHEVERRIA-BENITEZ,

Defendant-Appellant

Consolidated with 18-41014

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ENRIQUE ECHEVERRIA-BENITEZ,

Defendant-Appellant

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 5:18-CR-460-1
USDC No. 5:18-CR-655-1

No. 18-41012
c/w No. 18-41014

Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

STEPHEN A. HIGGINSON, Circuit Judge:*

In these consolidated cases, Enrique A. Echeverria-Benitez appeals his within-guidelines and within-range sentences for his conviction of illegal reentry after removal and resulting revocation of supervised release. He was sentenced, respectively, to 27 months of imprisonment, to be followed by three years of supervised release, and nine months of imprisonment, running consecutively. Echeverria-Benitez argues that the district court improperly based his revocation sentence on a “retributive” sentencing factor under 18 U.S.C. § 3553(a)(2)(A) when it ordered his sentences to run consecutively. He also argues that his sentences are substantively unreasonable, especially insofar as their consecutive nature effectively punishes him twice for the same conduct.

We review these unpreserved arguments under the plain error standard. *United States v. Whitelaw*, 580 F.3d 256, 259–60 (5th Cir. 2009); *United States v. Peltier*, 505 F.3d 389, 391–92 (5th Cir. 2007). In order to prevail under that standard, Echeverria-Benitez must show that he did not intentionally relinquish or abandon the claim of error, the error was plain, clear, or obvious, and the error affected his substantial rights. *United States v. Perez-Mateo*, 926 F.3d 216, 218 (5th Cir. 2019). “Where those three conditions are met, and the error also seriously affects the fairness, integrity or public reputation of judicial proceedings, then the court of appeals should exercise its discretion to correct the forfeited error.” *Id.* (internal quotation marks and citation omitted).

* 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. 18-41012
c/w No. 18-41014

It is error for a district court to calculate a revocation sentence “based on a perceived need for retribution” under § 3553(a)(2)(A). *United States v. Sanchez*, 900 F.3d 678, 683 (5th Cir. 2018); *see also United States v. Miller*, 634 F.3d 841, 844 (5th Cir. 2011). However, Echeverria-Benitez has not cited any governing authority that supports his argument that consecutive sentences for a new law violation and a resulting revocation indicate reliance on such a factor. “[A]n error is not plain if it requires the extension of precedent.” *United States v. Vargas-Soto*, 700 F.3d 180, 182 (5th Cir. 2012). Therefore, Echeverria-Benitez has not shown any error that was clear or obvious as to the factors on which the district court based his revocation sentence.

Likewise, Echeverria-Benitez has not shown that his within-guidelines and within-range sentences were plainly unreasonable. “A sentence is substantively 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. Warren*, 720 F.3d 321, 332 (5th Cir. 2013) (internal quotation marks and citation omitted). Echeverria-Benitez’s sentences fall within the advisory guidelines range and the advisory policy statements range, and thus are presumptively reasonable. *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009); *United States v. Lopez-Velasquez*, 526 F.3d 804, 809 (5th Cir. 2008). “The Sentencing Commission’s relevant policy statements recommend that sentences involving revocation of supervised release . . . run consecutively.” *United States v. Flores*, 862 F.3d 486, 489 (5th Cir. 2017); *see also* U.S.S.G. § 7B1.3(f) & cmt. n.4. We have previously upheld consecutive sentences for illegal reentry after removal and resulting revocations of supervised release. *See United States v. Hernandez-Archila*, 700 F. App’x 370, 371 (5th Cir. 2017); *United States v. Cantu-Sandoval*, 668 F.

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App'x 638, 639 (5th Cir. 2016). Echeverria-Benitez has not shown that the district court clearly gave improper weight to any factor or clearly erred in its balancing of the sentencing factors.

Therefore, we AFFIRM the judgments of the district court.

APPENDIX B

UNITED STATES DISTRICT COURT
Southern District of Texas
Holding Session in Laredo

ENTERED

October 19, 2018

David J. Bradley, Clerk

UNITED STATES OF AMERICA

V.

ENRIQUE A. ECHEVERRIA-BENITEZ

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 5:18CR00460-001

USM NUMBER: 34461-001

☐ See Additional Aliases.Oscar J. Pena, Sr.

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) One on August 3, 2018.☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. §§ 1326(a) and 1326(b)	Re-entry of a deported alien	05/30/2018	One

☐ See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the .

It is ordered that the defendant must notify the United States attorney for this district within 30 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 17, 2018

Date of Imposition of Judgment

Signature of Judge

DIANA SALDAÑA

UNITED STATES DISTRICT JUDGE

Name and Title of Judge

October 19, 2018

Date

DEFENDANT: **ENRIQUE A. ECHEVERRIA-BENITEZ**
CASE NUMBER: **5:18CR00460-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 27 months, to be served consecutive and in addition to 9 months in Case Number: 5:18CR00655-001, for a total term of 36 months imprisonment.

The defendant was advised of the right to appeal the sentence, including the right to appeal in forma pauperis, upon proper documentation.

☐ See Additional Imprisonment Terms.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be placed in a facility near Fort Worth, Texas, as long as the security needs of the Bureau of Prisons are met.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: **ENRIQUE A. ECHEVERRIA-BENITEZ**
CASE NUMBER: **5:18CR00460-001**

SUPERVISED RELEASE

Upon release from imprisonment you will be on supervised release for a term of: 3 years.

☐ See Additional Supervised Release Terms.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

☒ See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **ENRIQUE A. ECHEVERRIA-BENITEZ**
CASE NUMBER: **5:18CR00460-001**

SPECIAL CONDITIONS OF SUPERVISION

You must immediately report, continue to report, or surrender to U.S. Immigration and Customs Enforcement and follow all their instructions and reporting requirements until any deportation proceedings are completed. If you are ordered deported from the United States, you must remain outside the United States unless legally authorized to reenter. If you reenter the United States, you must report to the nearest probation office within 72 hours after you return.

DEFENDANT: ENRIQUE A. ECHEVERRIA-BENITEZ
CASE NUMBER: 5:18CR00460-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

☐ See Additional Terms for Criminal Monetary Penalties.

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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☐ See Additional Restitution Payees.

TOTALS	<u>\$0.00</u>	<u>\$0.00</u>	
---------------	---------------	---------------	--

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ENRIQUE A. ECHEVERRIA-BENITEZ
CASE NUMBER: 5:18CR00460-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$100.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after the date of this judgment; or
- D ☐ Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court
1300 Victoria, Ste. 1131
Laredo, TX 78040

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ See Additional Defendants and Co-Defendants Held Joint and Several.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
- ☐ See Additional Forfeited Property.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX C

UNITED STATES DISTRICT COURT
Southern District of Texas
 Holding Session in Laredo

ENTERED

October 19, 2018

David J. Bradley, Clerk

UNITED STATES OF AMERICA
 V.
ENRIQUE ECHEVERRIA-BENITEZ
 A/K/A ENRIQUE A. ECHEVERRIA-BENITEZ

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

(For Offenses Committed On or After November 1, 1987)

CASE NUMBER: 5:18CR00655-001

USM NUMBER: 34461-001

☐ See Additional Aliases.Oscar J. Pena, Sr.

Defendant's Attorney

THE DEFENDANT:

- ☒ admitted guilt to violation of condition(s) 1 and 2 of the term of supervision.
☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1.	Special Condition Violation: If deported, (a) the term of supervision shall be non-reporting while the defendant resides outside the United States, (b) the defendant shall not reenter the United States without the express permission of the Secretary of Homeland Security, and (c) if the defendant should reenter the United States within the term of supervised release, the defendant is to report to the nearest United States Probation Office within seventy-two (72) hours of arrival.	05/30/2018
2	New Law Violation: Re-entry of a deported alien.	05/30/2018

☐ See Additional Violations.

The defendant is sentenced as provided in pages 2 through 2 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: XXX-XX-NoneDefendant's Date of Birth: XX/XX/1988

Defendant's Residence Address:

Pachuca, Hidalgo, Mexico

Defendant's Mailing Address:

Pachuca, Hidalgo, MexicoOctober 17, 2018

Date of Imposition of Judgment

Signature of Judge

DIANA SALDAÑA**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

October 19, 2018

Date

RC | CL

DEFENDANT: **ENRIQUE ECHEVERRIA-BENITEZ**
CASE NUMBER: **5:18CR00655-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 9 months.

The defendant was advised of the right to appeal the sentence, including the right to appeal in forma pauperis, upon proper documentation.

- ☐ See Additional Imprisonment Terms.
- ☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be placed in a facility near Fort Worth, Texas, as long as the security needs of the Bureau of Prisons are met.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
☐ by _____ ☐ a.m. ☐ p.m. on _____.
☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL