

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

INOCENTE RODRIGUEZ-JUAREZ,

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

December 4, 2019

Lyle W. Cayce
Clerk

No. 19-10236

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

INOCENTE RODRIGUEZ-JUAREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-223-1

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:*

Inocente Rodriguez-Juarez appeals the 57-month, within-guidelines prison sentence imposed following his conviction for illegal reentry. He contends that his sentence is substantively unreasonable because the district court failed to accord sufficient weight to the fact that the Government did not commence prosecution until after he was convicted in state court of felony driving while intoxicated and was released on parole. Although Rodriguez-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

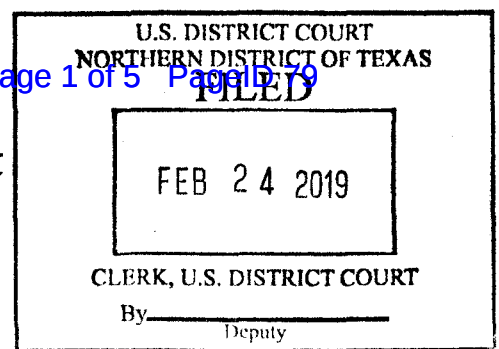
Juarez also contends that his prison sentence and three-year supervised release term are unconstitutional because they exceed the statutory maximum charged in the indictment, he concedes that the argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998), and he raises the issue solely to preserve it for further review.

We generally review a sentence for reasonableness, under an abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). The district court must correctly calculate the guidelines range and make an individualized assessment based on the facts of the case in light of the factors set forth in 18 U.S.C. § 3553(a). *Id.* at 49-50. The court shall impose a sentence sufficient, but not greater than necessary, to comply with § 3553(a)(2)’s goals. § 3553(a). Where, as here, the district court imposes a sentence within a properly calculated guidelines range, the sentence is entitled to a rebuttable presumption of reasonableness. *United States v. Rashad*, 687 F.3d 637, 644 (5th Cir. 2012). “The presumption is rebutted only upon a showing that the sentence does not account for a factor that should receive significant weight, it gives significant weight to an irrelevant or improper factor, or it represents a clear error of judgment in balancing sentencing factors.” *United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009).

The record reflects that the court considered the mitigating evidence presented by Rodriguez-Juarez, including the fact that he would not receive credit against his federal sentence for time spent in state custody and his detention on an immigration detainer. The court ultimately elected not to impose an upward variance, as it had been inclined to do based on Rodriguez-Juarez’s multiple convictions for driving while intoxicated, and ordered that the federal sentence run concurrently to any future prison term that may be imposed if the State were to revoke Rodriguez-Juarez’s parole. Rodriguez-

Juarez therefore has not shown that the district court abused its discretion in weighing or balancing the sentencing factors. *See Cooks*, 589 F.3d at 186. Accordingly, Rodriguez-Juarez fails to rebut the presumptive reasonableness of his within-Guidelines sentence. *See Rashad*, 687 F.3d at 644. The judgment of the district court is thus AFFIRMED.

APPENDIX B

United States District CourtNorthern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA §

v. §

Case Number: 4:18-CR-223-A(01)

INOCENTE RODRIGUEZ-JUAREZ §

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Dan Cole. The defendant, INOCENTE RODRIGUEZ-JUAREZ, was represented by Federal Public Defender through Assistant Federal Public Defender Michael Lehmann.

The defendant pleaded guilty on November 2, 2018 to the one count indictment filed on September 11, 2018. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
8 U.S.C. §1326(a) and (b)(1) Illegal Reentry After Deportation	12/09/2017	1

As pronounced and imposed on February 22, 2019, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 57 months. This sentence shall run concurrently with any future sentence that might be imposed in Case No. 1524129D in the 371st District Court of Tarrant County.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years. The court imposed a term of supervised release because it will provide an added measure of deterrence and protection based on the facts and circumstances of this case.

Pursuant to 18 U.S.C. §3583(d), as a condition of supervised release, upon the completion of the sentence of imprisonment the defendant shall be surrendered by the Federal Bureau of Prisons to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported 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 comply with the standard conditions ordered by this court and shall comply with the following additional conditions:

1. The defendant shall not unlawfully possess a controlled substance.
2. The defendant shall not commit another federal, state, or local crime.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall 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.
5. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.

5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall 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.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall 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.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 24th day of February, 2019.



JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2019 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal