

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SILVESTRE LARA-CERVANTES,

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**

No. 19-10048
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 20, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

SILVESTRE LARA-CERVANTES,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-198-1

Before BENAVIDES, DENNIS, and OLDHAM, Circuit Judges.

PER CURIAM:*

Silvestre Lara-Cervantes pleaded guilty to illegal reentry after deportation in violation of 8 U.S.C. § 1326(a) and (b)(1). The district court sentenced him to 46 months of imprisonment followed by a one-year term of supervised release. Lara-Cervantes filed a timely notice of appeal.

Lara-Cervantes argues that his bottom-of-the-guidelines sentence is substantively unreasonable because the district court failed to give enough

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

weight to the fact that he had spent eight months in state custody for driving while intoxicated (DWI) before being prosecuted for illegal reentry. This court considers the substantive reasonableness of the sentence imposed under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007).

The record reflects that the district court considered Lara-Cervantes's arguments for a downward departure to account for the time he spent in state custody for his most recent DWI offense. The court concluded, however, that given Lara-Cervantes's criminal history, which included four DWI offenses, and the danger he posed to the public, such a departure was not warranted. As provided by the commentary to U.S.S.G. § 2L1.2, the seriousness of Lara-Cervantes's criminal history was an appropriate factor for the court to consider. § 2L1.2, comment. (n.6) (2016).

Lara-Cervantes's arguments are nothing more than a disagreement with the district court's weighing of the § 3553(a) factors, which is insufficient to show an abuse of discretion. *See United States v. Ruiz*, 621 F.3d 390, 398 (5th Cir. 2010). Because Lara-Cervantes has not rebutted the presumption of reasonableness applicable to his within-guidelines sentence, the judgment of the district court is AFFIRMED. *See United States v. Cooks*, 589 F.3d 173, 186 (5th Cir. 2009).

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-00198-O(01)
U.S. Marshal's No.: 58796-479
SILVESTRE LARA-CERVANTES Alex C. Lewis, Assistant U.S. Attorney
Jaidee Serrano, Attorney for the Defendant

On September 19, 2018 the defendant, SILVESTRE LARA-CERVANTES, entered a plea of guilty as to Count One of the Indictment filed on August 15, 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	December 24, 2017	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 August 15, 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: SILVESTRE LARA-CERVANTES
Case Number: 4:18-CR-00198-O(1)

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IMPRISONMENT

The defendant, SILVESTRE LARA-CERVANTES, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Forty-Six (46) months** as to Count One of the Indictment filed on August 15, 2018.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **One (1) year** as to Count One of the Indictment filed on August 15, 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: SILVESTRE LARA-CERVANTES
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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 custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry; 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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RETURN

I have executed this judgment as follows:

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

United States Marshal

BY _____
Deputy Marshal