

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JORGE MADRID-URIARTE,

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. 19-10370
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 27, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JORGE MADRID-URIARTE,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-200-1

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:*

Jorge Madrid-Uriarte appeals the above-guidelines sentence of 71 months of imprisonment imposed following his guilty plea conviction for illegal reentry into the United States after removal. He contends the district court improperly considered his unadjudicated arrests at the sentencing hearing. According to Madrid-Uriarte, when the district court stated that it had tentatively decided to overrule his objections to the presentence report (PSR)

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

“for the reasons argued by the Government in response to the defendant’s objections,” the district court concluded that his unadjudicated arrests constituted “credible information that [Madrid-Uriarte] has engaged in other criminal activity.” He maintains that he preserved this issue for appellate review because he stated in his objections to the PSR that the court should consider his “convictions rather than underlying criminal conduct.”

Claims of procedural error at sentencing are ordinarily reviewed *de novo*, *United States v. Harris*, 702 F.3d 226, 229 (5th Cir. 2012), but plain error review applies if the error was not preserved in the district court, *United States v. Williams*, 620 F.3d 483, 493 (5th Cir. 2010). “To preserve error, an objection must be sufficiently specific to alert the district court to the nature of the alleged error and to provide an opportunity for correction.” *United States v. Wooley*, 740 F.3d 359, 367 (5th Cir. 2014) (internal quotation marks and citation omitted). Madrid-Uriarte’s arguments in the district court did not alert the district court to consider the specific argument he is raising on appeal and did not provide the court the opportunity to clarify whether it had considered Madrid-Uriarte’s arrest record in determining the appropriate sentence. Therefore, review is limited to plain error. *See id.* To establish plain error, he must show a forfeited error that is clear and obvious and that affected his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing, we have the discretion to correct the error but should do so only if it “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (internal quotation marks, brackets, and citation omitted).

Although the district court stated that it was tentatively overruling Madrid-Uriarte’s objections for the reasons given by the Government in its response to his objections at the beginning of the sentencing hearing, the court

did not expressly state that it had considered Madrid-Uriarte's arrest record. After considering the parties' arguments and Madrid-Uriarte's allocution, the district court gave the following extensive reasons for the sentence imposed. Madrid-Uriarte's criminal history category substantially underrepresented the seriousness of his criminal history and the likelihood that he would commit other crimes. He had a lengthy criminal history, beginning in 2001 and continuing until his arrest for this offense. In addition, Madrid-Uriarte had been removed to Mexico on seven prior occasions. His prior sentences and his prior removals did not deter him from returning to the United States illegally and committing further crimes. The court adopted the PSR, and its statements at sentencing reflect that it relied on the PSR's statements concerning factors that might warrant an upward departure or variance. In view of the entire record, the district court's statements at the sentencing hearing do not establish that it improperly considered Madrid-Uriarte's arrest record. To the extent that the district court's statements could be construed as ambiguous because it adopted the Government's response, any error was not of the clear or obvious type required by the plain error standard. *See United States v. Ibarra-Zelaya*, 465 F.3d 596, 607 (5th Cir. 2006) ("Because the error, if there was error, is based on an ambiguous statement, there can be no relief under the plain error standard.").

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JORGE MADRID-URIARTE

Case Number: 4:18-CR-200-Y(1)

M. Levi Thomas, assistant U.S. attorney

William Hermesmeyer, attorney for the defendant

On November 20, 2018, the defendant, Jorge Madrid-Uriarte, entered a plea of guilty to count one of the one-count indictment. 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 CONCLUDED</u>	<u>COUNT</u>
8 U.S.C. § 1326(a) and (b)(1)	Illegal Reentry After Deportation	September 16, 2017	1

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

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 March 28, 2019.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed March 29, 2019.

Judgment in a Criminal Case

Defendant: Jorge Madrid-Uriarte

Case Number: 4:18-CR-200-Y(1)

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IMPRISONMENT

The defendant, Jorge Madrid-Uriarte, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 71 months on count one of the one-count indictment. This sentence shall run consecutively to any sentence imposed in the defendant's pending post-release community supervision revocation in Case No. XEAKA10684401, Los Angeles County Superior Court, Los Angeles, CA, but concurrently with the sentence imposed in Case No. CR20119 in the 271st Judicial District Court, Wise County, Texas.

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 3 years on count one of the one-count indictment. 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 condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

If 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, 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 in a manner and frequency directed by the Court or probation officer;
- (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.

In addition the defendant shall:

Judgment in a Criminal Case

Defendant: Jorge Madrid-Uriarte

Case Number: 4:18-CR-200-Y(1)

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not commit another federal, state, or local crime;

not possess illegal controlled substances;

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

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

report in person to the probation office in the district to which the defendant is released from the 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;

not illegally reenter the United States if deported, removed, or allowed voluntary departure; and

refrain from any unlawful use of a controlled substance. The defendant shall submit 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.

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.

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