



**A** Neutral

As of: September 20, 2021 11:23 PM Z

## United States v. Martinez

United States Court of Appeals for the Ninth Circuit

March 1, 2021, Argued and Submitted, San Francisco, California; April 8, 2021, Filed

No. 20-10056

### Reporter

852 Fed. Appx. 271 \*; 2021 U.S. App. LEXIS 10122 \*\*; 2021 WL 1310830

UNITED STATES OF AMERICA, Plaintiff-Appellee, v.  
ANTONIO RENE MARTINEZ, Defendant-Appellant.

**Notice:** PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.*

**Subsequent History:** Rehearing denied by *United States v. Martinez, 2021 U.S. App. LEXIS 12549 (9th Cir. Cal., Apr. 27, 2021)*

**Prior History:** [\*\*1] Appeal from the United States District Court for the Eastern District of California. D.C. No. 1:14-cr-00158-LJO-SKO-1. Lawrence J. O'Neill, District Judge, Presiding.

*United States v. Martinez, 2020 U.S. Dist. LEXIS 19427, 2020 WL 429491 (E.D. Cal., Jan. 28, 2020)*

**Disposition:** AFFIRMED.

### Core Terms

sentence, district court, guilty plea, harmless, plea agreement, no reasonable probability, reasonable probability, shorter sentence, direct appeal, plain error, ineffective, Guidelines, challenges, equivocate, accepting, proffered, contends, reentry, vacate, verify

### Case Summary

#### Overview

**HOLDINGS:** [1]-The defendant's 41-month sentence imposed following his guilty-plea conviction for illegal reentry in violation of 8 U.S.C.S. § 1326(a) was affirmed because the

App. 1

David Schlesinger

district court deviated significantly from the requirements of Fed. R. Crim. P. 11. However, defendant had not demonstrated a reasonable probability that the errors affected his decision to plead guilty. While the record showed that he equivocated about accepting the plea agreements offered by the government, he did not equivocate about his ultimate decision to plead guilty.

#### Outcome

Judgment affirmed.

### LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > Plain Error > Burdens of Proof

Criminal Law & Procedure > ... > Standards of Review > Plain Error > Guilty Pleas

**HN1** Plain Error, Burdens of Proof

To establish plain error, defendant must demonstrate a reasonable probability that, but for the Fed. R. Crim. P. 11 error, he would not have entered the plea.

Criminal Law & Procedure > ... > Standards of Review > Harmless & Invited Error > Harmless Error

**HN2** Harmless & Invited Error, Harmless Error

The error is harmless if it is clear that no prejudice resulted.

**Counsel:** For UNITED STATES OF AMERICA, Plaintiff -

Appellee: Melanie Leigh Alsworth, Assistant U.S. Attorney, Fresno, CA; Vincenza Rabenn, Attorney, Sacramento, CA.

For ANTONIO RENE MARTINEZ, Defendant - Appellant: David Andrew Schlesinger, Esquire, Jacobs & Schlesinger LLP, San Diego, CA.

Judges: Before: WARDLAW and BERZON, Circuit Judges, and CHEN, \*\* District Judge.

## Opinion

### [\*272] MEMORANDUM\*

Antonio Rene Martinez appeals from the district court's judgment and challenges [\*273] the 41-month sentence imposed following his guilty-plea conviction for illegal reentry in violation of 8 U.S.C. § 1326(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Martinez was charged with illegal reentry. After rejecting proffered plea agreements, Martinez entered an open plea of guilty and was sentenced to 41 months in prison.

Martinez filed a pro se motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, alleging ineffective assistance of counsel ("IAC"). After an evidentiary hearing, the district court denied the § 2255 motion. The district court found that Martinez had been correctly advised [\*2] of his sentencing guidelines exposure, determined that Martinez's priority had been to preserve his appellate rights in order to maintain the best chance of remaining lawfully in the United States, and rejected Martinez's claim that he received ineffective assistance regarding his ability to attack his underlying deportation order. The district court also denied Martinez's IAC claim challenging counsel's failure to file a direct appeal on Martinez's behalf, but issued a certificate of appealability on that issue. Martinez appealed. The parties subsequently agreed that Martinez should be allowed to take a direct appeal in light of Garza v. Idaho, 139 S. Ct. 738, 203 L. Ed. 2d 77 (2019). Upon the parties' request, this court vacated the district court's order denying Martinez's § 2255 motion, and the district court re-entered the criminal judgment. This

appeal followed.<sup>1</sup>

1. Martinez argues that the district court's failure to comply strictly with Rule 11, in particular sub-sections (b)(1)(M), (b)(1)(O), and (b)(2), constituted reversible error. Because Martinez did not object during the plea colloquy, we review for plain error. Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 730-36, 113 S. Ct. 1770, 123 L. Ed. 2d 508 (1993).

**HNI** [¶] To establish plain error, Martinez must demonstrate a "reasonable probability that, but for the [Rule 11] error, he would not have [\*\*3] entered the plea." United States v. Monzon, 429 F.3d 1268, 1272 (9th Cir. 2005) (quoting United States v. Dominguez Benitez, 542 U.S. 74, 83, 124 S. Ct. 2333, 159 L. Ed. 2d 157 (2004)). In undertaking that inquiry, the court considers, *inter alia*, "the overall strength of the Government's case and any possible defenses that appear from the record," "evidence tending to show that a misunderstanding was inconsequential to a defendant's decision, [and] evidence indicating the relative significance of other facts that may have borne on his choice regardless of any Rule 11 error." *Id.* (quoting Dominguez Benitez, 542 U.S. at 84-85).

In this case, the district court deviated significantly from the requirements of Rule 11. However, Martinez has not demonstrated a reasonable probability that the errors affected his decision to plead guilty. While the record shows that Martinez equivocated about accepting the plea agreements offered by the government, he did not equivocate about his ultimate decision to plead guilty. In his post-conviction letters to the court, Martinez repeatedly challenged the length of the sentence he received, rather than the guilty plea itself. He also proposed accepting one of the previously rejected plea offers the government had proffered. Even in his motion for [\*274] reconsideration, Martinez did not request to withdraw his plea and go to trial. Instead, he asked the court [\*4] to impose the lower sentence contemplated in the plea agreements offered by the government.

Moreover, the government's overall case against Martinez was strong; had he gone to trial and been convicted (a likely result), his total offense level would no longer reflect a three-point reduction for acceptance of responsibility under U.S.S.G. §§ 3E1.1(a) and (b). Instead, Martinez would have

\*\* The Honorable Edward M. Chen, United States District Judge for the Northern District of California, sitting by designation.

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

<sup>1</sup> This appeal is from the conviction only. It does not cover the IAC claims concerning the guilty plea raised in the earlier § 2255 motion, and we express no view as to the merits of those claims or whether or how Martinez may seek to renew those claims once the conviction becomes final.

faced a higher Guidelines range, 57-71 months. Thus, even though Martinez contends that had he been asked by the judge whether any promises had been made to him, he might have responded that his lawyer had led him to expect a shorter sentence, there is no reasonable probability that Martinez, upon being disabused of any guarantee of a shorter sentence if he pled guilty, would have risked a trial that likely would have resulted in an even longer sentence.

We conclude there is no reasonable probability that the Rule 11 errors impacted Martinez's decision to plead guilty. We do note that as Rule 11's requirements are meant to avoid the need to inquire into the voluntariness of a plea after-the-fact, *see McCarthy v. United States*, 394 U.S. 459, 465-66, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969), careful adherence to them benefits both the litigants and the courts by eliminating the necessity for the sort of retrospective inquiry we [\*\*5] have just conducted.

2. Martinez next contends that the district court violated Federal Rule of Criminal Procedure 32(i)(1)(A) at sentencing by failing to verify that he had reviewed and discussed the presentence investigation report ("PSR") with counsel. We review for harmless error a district court's failure to verify that a defendant read a presentence report and discussed the same with his counsel. *United States v. Soltero*, 510 F.3d 858, 863 (9th Cir. 2007). HN21 The error is harmless "if it is clear that no prejudice resulted." *Id.* (quoting *United States v. Davila-Escovedo*, 36 F.3d 840, 844 (9th Cir. 1994)).

As Martinez concedes, any error was harmless because he has "'made no affirmative allegation that he failed to read the report' and review it with his attorney," nor has he "identified—either to the district court or to this court—any fact in the PSR he would have disputed had the sentencing judge afforded him the opportunity." *Id.* (quoting *Davila-Escovedo*, 36 F.3d at 844) (emphasis in original). Accordingly, the district court's Rule 32(i)(1)(A) error was harmless.

**AFFIRMED.**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
HON. LAWRENCE J. O'NEILL

UNITED STATES OF AMERICA, } 1:14-cr-158 LJO-SKO  
Plaintiff, } CHANGE OF PLEA and  
vs. } SENTENCING  
ANTONIO RENE MARTINEZ, }  
Defendant. }

Fresno, California

Monday, August 29, 2016

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES OF COUNSEL:

For the Government:

VINCENZA RABENN  
Assistant U.S. Attorney  
2500 Tulare Street, Rm. 4401  
Fresno, California 93721

For the Defendant:

LAW OFFICE OF KEVIN G. LITTLE  
Post Office Box 8656  
Fresno, CA 93747  
BY: KEVIN G. LITTLE

REPORTED BY: PEGGY J. CRAWFORD, RDR, CRR, Official Reporter

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

3 THE COURT: Antonio Martinez, number 3 on calendar,  
4 Antonio Martinez.

5 MR. LITTLE: Kevin Little with Mr. Martinez, who is  
6 being assisted by the Spanish interpreter.

7 (The following proceedings were had with the aid of  
8 Certified Spanish Court Interpreter AIMEE BENAVIDES, oath  
9 on file.)

10 MS. RABENN: Vincenza Rabenn for the government.

11 THE COURT: My understanding is that you want a  
12 change of plea this morning where there is no plea agreement?

13 MR. LITTLE: That's correct, your Honor.

14 THE COURT: Was there an offer?

15 MS. RABENN: Yes, your Honor.  
16 MR. LITTLE: There was. There was an offer, but  
17 there is an issue with this case that where Mr. Martinez  
18 simply can't afford to revoke or waive his rights to appeal.

19                   He currently has pending in the state court a  
20 petition to vacate one of his priors.  Indeed, the prior that  
21 made him deportable under Penal Code 1016.5, we filed a  
22 motion.  That motion was granted as to one of his priors,  
23 denied as to the other.  With regard to the one that was  
24 denied, it is on appeal.

25 He also has pending immigration proceedings that will

1 rely upon also the result of those state court proceedings.

2 He simply can't afford to waive his rights to revisit  
3 this case, either by appeal or a 2255 depending upon the  
4 results of those other proceedings.

5 And that's the reason why we are pleading without an  
6 agreement, your Honor.

7 THE COURT: And he does realize that if he pleads  
8 guilty, he is going to be sentenced before the state court  
9 appeal is resolved?

10 MR. LITTLE: He fully understands that, yes.

11 THE COURT: All right.

12 BY THE COURT:

13 Q. All right. What is your name, sir?

14 A. Rene Antonio Martinez.

15 Q. My understanding, based on what your lawyer is telling me,  
16 is that you want to change your plea and simply plead guilty  
17 to the charge that is the subject of the indictment, with no  
18 agreement with the government. That's my understanding. Is  
19 that yours?

20 A. Yes.

21 Q. Do you understand that this decision is -- you can get,  
22 certainly, advice from your lawyer, but ultimately, this  
23 decision is not his, but it is yours?

24 A. Yes.

25 Q. Do you have any questions that you want to ask him or me?

1 A. No.

2 Q. Do you understand that if you wanted to go to trial, you  
3 could?

4 A. Yes.

5 Q. But if you plead guilty, there won't be any trial because  
6 there is nothing to prove any longer. Do you understand that?

7 A. Yes.

8 Q. You understand that -- hang on one second.

9 Let me ask one question, Mr. Little.

10 MR. LITTLE: Yes, your Honor.

11 THE COURT: What is his position going to be when we  
12 get to the indictment, at page 1, line 25?

13 MR. LITTLE: Your Honor, the prior conviction that's  
14 listed there?

15 THE COURT: Right.

16 MR. LITTLE: I believe that's the 245. That is the  
17 subject of the pending appeal, so that conviction remains  
18 valid, so we would be admitting that.

19 THE COURT: Okay.

20 BY THE COURT:

21 Q. Do you understand that -- do you know what you are charged  
22 with?

23 A. Yes.

24 Q. And do you understand that the elements are that you, on  
25 or about June 15, 2014, you were found within the State and

1 Eastern District of California, and obviously in the United  
2 States, with neither the Attorney General nor the Secretary of  
3 the Department of Homeland Security having expressly consented  
4 to a reapplication by you for admission into this country. Do  
5 you understand that?

6 A. Yes.

7 Q. I understand. And do you understand that the maximum  
8 penalty in this case is a \$250,000 fine or 20 years, or both;  
9 do you understand?

10 A. Yes, I understand.

11 Q. And do you understand that an admission here may affect  
12 your immigration status and make you subject to deportation?  
13 Do you understand that?

14 A. I understand.

15 Q. Do you have any questions at all?

16 A. No.

17 Q. If you wanted to go to trial, you could, and the  
18 government would have the burden of proving the case against  
19 you. She would bring in witnesses and evidence. You would  
20 watch that happen. Your lawyer would cross-examine any of  
21 those witnesses.

22 If you wanted to testify, you could. If you decided  
23 you didn't, nobody would use that against you. You could  
24 bring in witnesses and evidence. We would help you get that  
25 here by the subpoena power of the Court.

1                   And your trial would be open to the public, just like  
2 today's hearing is. Do you understand those trial rights?

3                   A. Yes, I understand.

4                   Q. Do you wish to give them up and plead guilty?

5                   A. Yes.

6                   Q. Is anybody forcing you or threatening you in any way to  
7 get you to do this?

8                   A. No.

9                   Q. Do you understand that I'm obligated to consider the  
10 federal guidelines in sentencing, but not obligated to follow  
11 them, and if I don't, you can't take your change of plea back?  
12 Do you understand that?

13                  A. Yes, I understand.

14                  Q. Do you have any questions at all?

15                  A. No.

16                  THE COURT: Counsel, then is there any reason I  
17 should not now take the change of plea?

18                  MR. LITTLE: No, your Honor.

19                  MS. RABENN: Your Honor, the government believes  
20 there is just a few additional facts that are necessary for  
21 the defendant to admit.

22                  THE COURT: Okay.

23                  MS. RABENN: First, that the defendant is a native  
24 and citizen of El Salvador, and is not a citizen of the United  
25 States of America.

1                   And on or about June 22, 2005, the defendant was  
2 removed from the United States.

3                   And on or about December 7, 2001, the defendant was  
4 convicted of assault with a deadly weapon, in violation of  
5 California Penal Code section 245(a)(1), in the Superior Court  
6 of California, County of Santa Clara. And that's all.

7                   THE COURT: All right.

8 BY THE COURT:

9 Q. Did you hear what she just said to me?

10 A. Yes.

11 Q. Do you understand what she said?

12 A. Yes.

13 Q. Do you have any questions about what it means?

14 A. No.

15                   THE COURT: Okay. Is there any reason then I should  
16 not now take the change of plea?

17                   MR. LITTLE: No, your Honor.

18                   MS. RABENN: No, your Honor.

19 BY THE COURT:

20 Q. Then what I will do is I will read you the charge. If you  
21 don't understand something or a question comes into your head,  
22 tell me, and we will stop. Fair enough?

23 A. Okay.

24 Q. The Grand Jury charges you, an alien, on or about June 22,  
25 2005, you were excluded, deported, or removed from the United

1 States, after being convicted of one or more crimes punishable  
2 by a term of imprisonment exceeding one year; specifically,  
3 assault with a deadly weapon, likely to cause great bodily  
4 injury, in violation of California Penal Code 245(a)(1), on or  
5 about December 7, 2001, in the Santa Clara County Superior  
6 Court, in California, and that you were sentenced to seven  
7 years' imprisonment in a case ending in 2340.

8 And thereafter, on or about June 15, 2014, you were  
9 found within the State and Eastern District of California,  
10 after knowingly and voluntarily entering the United States,  
11 with neither the United States Attorney General nor the  
12 Secretary of the Department of Homeland Security having  
13 expressly consented to a reapplication by you for admission  
14 into this country, all in violation of Title 8 of United  
15 States Code sections 1326(a) and (b)(2).

16 How do you wish to plead, guilty or not guilty?

17 A. Guilty.

18 THE COURT: The Court accepts the knowing,  
19 intelligent, and voluntary waiver of rights, knowing,  
20 intelligent, and voluntary change of plea.

21 How does November 21 look, at 8:30?

22 MR. LITTLE: That's fine, your Honor. We had talked  
23 about the possibility of having Mr. Martinez sentenced today  
24 based on the pre-plea report, but I don't think that that's  
25 possible because the current report is inaccurate.

1           It reflects a conviction that has been vacated, and  
2 so his criminal history points need to be retabulated. And,  
3 of course, all of this information is subject to verification  
4 by Probation. So I do believe we need to have a separate  
5 sentence.

6           PROBATION OFFICER: Your Honor, if defense counsel is  
7 referring to the conviction at paragraph 20?

8           MR. LITTLE: The 288?

9           PROBATION OFFICER: The 1992 conviction?

10          MR. LITTLE: Yes.

11          PROBATION OFFICER: That, actually, your Honor,  
12 doesn't contribute to criminal history points to the guideline  
13 calculation.

14          The only one that scored any criminal history points  
15 is the 2000 conviction that is alleged in the indictment.

16          THE COURT: What do you want to do?

17          MR. LITTLE: In that case, I don't see any reason why  
18 we can't go forward, if it doesn't affect his criminal history  
19 score.

20          THE COURT: Any objection by the government?

21          MS. RABENN: No, your Honor.

22          THE COURT: The Court has received and reviewed the  
23 PSR. It is before me. And according to the PSR, the  
24 applicable offense level is 21. History Category is II.  
25 Guideline range is 41 to 51 months, with a recommendation at

1 the low end.

2 Do you wish to be heard before sentencing?

3 MR. LITTLE: Yes, your Honor.

4 THE COURT: Either you or your client or both?

5 MR. LITTLE: Your Honor, we would ask the Court to  
6 consider the circumstances of this case. This is a gentleman  
7 who has already served two years and eight months, I believe,  
8 in prison for a conviction that was already vacated.

9 And even though that conviction was not the  
10 conviction that was the basis of his deportation, it certainly  
11 was set forth in the deportation petition and was considered  
12 as evidence of his -- that contributed to his deportation.

13 We also ask the Court to consider the fact that this  
14 is a gentleman who has an alcohol problem and his more recent  
15 criminal conduct has been related to alcohol.

16 But he has also been a very hard-working individual.  
17 He worked and supported his family, including his extended  
18 family, for several years, trimming trees.

19 He has resided, albeit, unlawfully, in the United  
20 States, and by and large, over the last decade has been a  
21 productive citizen and a supporter of his household.

22 We would ask the Court to consider those factors.

23 THE COURT: Sir, is there anything you want to tell  
24 me before I sentence you?

25 THE DEFENDANT: No. Well, and the real reason that I

1 came back to this country was that I was being threatened, and  
2 I never thought that I was going to get time imposed for  
3 having come in illegally.

4 And I understand that in my youth, I did have a bad  
5 record, but that's what I was trying to do. I was trying to  
6 work hard to support my family.

7 THE COURT: I'm not sure I understand when you say  
8 that you didn't think that you were going to get punished for  
9 coming into the country illegally. What did you think was  
10 going to happen? Nothing?

11 THE DEFENDANT: I didn't think that. My plans were  
12 to fix my legal status.

13 THE COURT: Well, you understand that you can't just  
14 come into anybody's country, nor can Americans go into other  
15 countries, illegally without punishment.

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: Does the government wish to be heard?

18 MS. RABENN: Your Honor, just briefly -- and I'm sure  
19 the defense counsel will correct me if I'm wrong -- but I  
20 believe his prior conviction was vacated on the basis that he  
21 wasn't properly advised of his -- of the consequences of his  
22 plea of guilty in that case. It wasn't vacated on any  
23 evidentiary issues.

24 THE COURT: There is nothing I can do with it anyway,  
25 is there? If it is not there, it is not there.

1 MS. RABENN: Right.

2 THE COURT: Okay.

3 MS. RABENN: And other than that, no, the government  
4 submits on the report of Probation, except for the page that  
5 suggests departures under a 5K, since there is none.

6 THE COURT: All right. Anything else?

7 MR. LITTLE: Your Honor, just to support  
8 Mr. Martinez's representation to the Court, I do have his  
9 immigration file, and it does show that at various points, he  
10 and his family have hired immigration attorneys to obtain a  
11 waiver of deportation and/or seek asylum.

12 He has made the contention before the Board of  
13 Immigration Appeals that he was subject to threats and that  
14 his life would be at risk if he were sent back to El Salvador.

15 I just wanted to put that in context so that the  
16 Court understands that what Mr. Martinez said here today, this  
17 is not the first time that he has said that.

18 THE COURT: All right. Matter submitted?

19 MR. LITTLE: Yes, your Honor.

20 MS. RABENN: Yes, your Honor.

21 THE COURT: Pursuant to the Sentencing Reform Act of  
22 1984, it is the judgment of the Court that the defendant is  
23 committed to the custody of the Bureau of Prisons, to be  
24 imprisoned for the low term of 41 months.

25 You shall pay a special assessment of a hundred

1 dollars, payment to begin immediately. The Court does find  
2 you do not have the ability to pay a fine, and that's waived.

3 You shall cooperate in the collection of DNA. \*

4 Is there a request geographically, Mr. Little?

5 MR. LITTLE: Your Honor, we would request a facility  
6 here in California, preferably in Southern California, so his  
7 family can visit.

8 THE COURT: Court will make that recommendation as it  
9 accords with security classification and space availability.

10 Sir, you are advised that you have a right to appeal.  
11 If you desire to appeal, you must file your notice of appeal  
12 with this Court within 14 days of today's date.

13 If you fail to meet that timeframe, it is a right  
14 gone forever, and if you want to do that and you want a lawyer  
15 and can't afford one, let us know, and we will appoint one for  
16 you.

17 Do you understand those appellate rights?

18 THE DEFENDANT: Yes.

19 THE COURT: That's the order.

20 MR. LITTLE: May I have one moment, your Honor?

21 THE COURT: Yes.

22 (Counsel and the defendant conferred off the record.)

23 MR. LITTLE: Your Honor, I apologize. I said  
24 Southern California. The defendant's family is in Menlo Park,  
25 so that would be Northern California.

1                   THE COURT: That's fine. We will change it.

2                   PROBATION OFFICER: Your Honor, with the Court's  
3 permission, I will remove any reference to paragraph 20, which  
4 is the conviction that was dismissed.

5                   THE COURT: Please.

6                   PROBATION OFFICER: Yes, sir.

7                   THE COURT: Thank you.

8                   MR. LITTLE: Thank you, your Honor.

9                   (The proceedings were concluded at 9:03 a.m.)

10                  I, PEGGY J. CRAWFORD, Official Reporter, do hereby  
11 certify the foregoing transcript as true and correct.

12  
13                  Dated: 20th of October, 2017                   /s/ Peggy J. Crawford  
14   PEGGY J. CRAWFORD, RDR-CRR

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**UNITED STATES DISTRICT COURT**  
**Eastern District of California**

UNITED STATES OF AMERICA

v.

**ANTONIO RENE MARTINEZ**

Date of Original Judgment: August 29, 2016  
 (Or Date of Last Amended Judgment)

**FIRST AMENDED JUDGMENT IN A CRIMINAL CASE**

Case Number: **1:14CR00158-001**

Defendant's Attorney: Kevin G. Little, Appointed

**Reason for Amendment:**

Correction of Sentence on Remand ( 18 U.S.C. 3742(f)(1) and (2))  
 Reduction of Sentence for Changed Circumstances (Fed R. Crim. P. 35(b))  
 Correction of Sentence by Sentencing Court (Fed R. Crim. P. 35(a))  
 Correction of Sentence for Clerical Mistake (Fed R. Crim. P. 36)

Modification of Supervision Conditions (18 U.S.C. § 3563(c) or 3583(e))  
 Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))  
 Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))  
 Direct Motion to District Court  18 U.S.C. §2255, (REMAND 9TH CIRCUIT)  
 Pursuant to  18 U.S.C. §3559(c)(7),  Modification of Restitution Order

**THE DEFENDANT:**

pleaded guilty to count(s) 1 of the Indictment.  
 pleaded nolo contendere to count(s) \_\_\_\_ which was accepted by the court.  
 was found guilty on count(s) \_\_\_\_ after a plea of not guilty.

**ACCORDINGLY**, the court has adjudicated that the defendant is guilty of the following offense (s):

Title & Section	Nature of Offense	Offense Ended	Count
8 USC 1326(a)	Deported Alien found in The United States (Class C Felony)	June 15, 2014	One

The defendant is sentenced as provided in pages 2 through 4 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) \_\_\_\_ and is discharged as to such count(s).  
 Count (s) \_\_\_\_ dismissed on the motion of the United States.  
 Indictment is to be dismissed by District Court on motion of the United States.  
 Appeal rights given.  Appeal rights waived.

IT IS FURTHER ORDERED that the defendant shall 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 or fine, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

8/29/2016

Date of Imposition of Judgment

/s/ Lawrence J. O'Neill

Signature of Judicial Officer

Lawrence J. O'Neill, United States District Judge

Name & Title of Judicial Officer

1/28/2020

Date

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 41 Months.

- No TSR: Defendant shall cooperate in the collection of DNA.
- The court makes the following recommendations to the Bureau of Prisons:  
The Court recommends that the defendant be incarcerated in Northern California or in a California facility, but only insofar as this accords with security classification and space availability.
- 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 \_\_\_\_ 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 \_\_\_\_ on \_\_\_\_.
  - as notified by the United States Marshal.
  - as notified by the Probation or Pretrial Services Officer.If no such institution has been designated, to the United States Marshal for this district.

### RETURN

I have executed this judgment as follows:

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

---

United States Marshal

---

By Deputy United States Marshal

**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>
<b>TOTALS</b>	\$100	\$0	\$0

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

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 victims must be paid before the United States is paid.

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:

If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

\*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.

## SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A.  Lump sum payment of \$ 100.00 due immediately, balance due
  - Not later than \_\_\_, or
  - in accordance  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 \_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_ over a period of \_\_\_ (e.g. months or years), to commence \_\_\_ (e.g. 30 or 60 days) after the date of this judgment; or
- D.  Payment in equal \_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_ over a period of \_\_\_ (e.g. months or years), to commence \_\_\_ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E.  Payment during the term of supervised release/probation will commence within \_\_\_ (e.g. 30 or 60 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:

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

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

- 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:

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.

**FILED**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

APR 27 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 20-10056

Plaintiff-Appellee,

D.C. No.

v.

1:14-cr-00158-LJO-SKO-1  
Eastern District of California,  
Fresno

ANTONIO RENE MARTINEZ,

ORDER

Defendant-Appellant.

Before: WARDLAW and BERZON, Circuit Judges, and CHEN,\* District Judge.

The panel has voted to deny Appellant's petition for panel rehearing. The petition for panel rehearing is DENIED.

---

\* The Honorable Edward M. Chen, United States District Judge for the Northern District of California, sitting by designation.

1 BENJAMIN B. WAGNER  
2 United States Attorney  
3 MIA A. GIACOMAZZI  
4 2500 Tulare Street, Suite 4401  
5 Fresno, California 93721  
6 Telephone: (559) 497-4000  
7 Facsimile: (559) 497-4099

8 Attorneys for the  
9 United States of America

FILED

JUL 31 2014

CLERK U.S. DISTRICT COURT  
BY S. MARTIN-GILL  
REPUTY CLERK

8 IN THE UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA, ) 1:14 CR 00158 - LJO SKO  
12 Plaintiff, ) CASE NO.  
13 v. ) VIOLATION: 8 U.S.C. § 1326(a) and  
14 ANTONIO RENE MARTINEZ, ) (b) (2) - Deported Alien Found in  
15 Defendant. ) the United States  
16  
17

18 I N D I C T M E N T

19 The Grand Jury charges: T H A T

20 ANTONIO RENE MARTINEZ,  
21 defendant herein, an alien, on or about June 22, 2005, was excluded,  
22 deported, or removed from the United States after being convicted of  
23 one or more crimes punishable by a term of imprisonment exceeding one  
24 year, specifically:

25 Assault with a Deadly Weapon Likely to Cause Great Bodily  
26 Injury, in violation of California Penal Code Section  
27 245(a)(1), on or about December 7, 2001, in Superior Court  
of California, County of Santa Clara, and the defendant was  
sentenced to 7 years imprisonment (Case No. BB052340);

28 and thereafter on or about June 15, 2014, the defendant was found

1 within the State and Eastern District of California after knowingly  
2 and voluntarily entering the United States, with neither the United  
3 States Attorney General nor the Secretary of the Department of  
4 Homeland Security having expressly consented to a reapplication by the  
5 defendant for admission into the United States, all in violation of  
6 Title 8, United States Code, Section 1326(a) and (b) (2).

7

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9

A TRUE BILL.

10

/s/ Signature on file w/AUSA

11

12

FOREPERSON

13

BENJAMIN B. WAGNER  
United States Attorney

14

15

**KIRK E. SHERIFF for**

16

17

MARK E. CULLERS  
Assistant U.S. Attorney  
Chief, Fresno Office

18

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UNITED STATES DISTRICT COURT  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, California 94102

[www.cand.uscourts.gov](http://www.cand.uscourts.gov)

Richard W. Wiekling  
Clerk

General Court Number  
415.522.2000

August 27, 2015

Office of the Clerk  
U.S. District Court  
501 "I" Street  
Sacramento CA 95814

**FILED**

AUG 31 2015

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY CLERK

Case Name: US-v-Antonio Rene Martinez  
Case Number: 3:15-71072 JCS Your court #1:14 CR 00158 LJO SKO  
Charges: 8:1326(a) and (b)(2) Deported alien found in U.S.

Dear Clerk:

The above charges originated in your district and the defendant has appeared before U.S. Magistrate Judge Joseph Spero. The following action has been taken:

The U.S. Marshal has been ordered to remove this defendant to your district forthwith.  
 The defendant has a court appearance in your court on:

Enclosed are the following documents:

original Rule 40 affidavit  
original minute orders  
certified copy of AO 94, *Commitment to Another District*

Please acknowledge receipt of the documents on the attached copy of this letter and return in the envelope provided.

Sincerely yours,

RICHARD WIEKING, Clerk

by: Lori Murray  
Case Systems Administrator

Enclosures  
cc: Financial Office

Receipt of the above-described documents is acknowledged herewith and assigned case number:

Date: \_\_\_\_\_

CLERK, U.S. DISTRICT COURT

1 MELINDA HAAG (CABN 132612)  
2 United States Attorney

3 DAVID R. CALLAWAY (CABN 121782)  
4 Chief, Criminal Division

5 WILLIAM J. EDELMAN (CABN 285177)  
6 Special Assistant United States Attorney

7 450 Golden Gate Avenue, Box 36055  
8 San Francisco, California 94102-3495  
9 Telephone: (415) 436-7265  
10 FAX: (415) 436-7234  
11 william.edelman@usdoj.gov

12 Attorneys for United States of America

FILED

AUG 24 2015

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

JCS

3-15-71072

13 UNITED STATES OF AMERICA, ) CRIMINAL NO.  
14 Plaintiff, )  
15 v. ) NOTICE OF PROCEEDINGS ON OUT-OF-  
16 ANTONIO RENE MARTINEZ, ) DISTRICT CRIMINAL CHARGES PURSUANT TO  
17 Defendant. ) RULES 5(c)(2) AND (3) OF THE FEDERAL  
18 ) RULES OF CRIMINAL PROCEDURE

19 Please take notice pursuant to Rules 5(c)(2) and (3) of the Federal Rules of Criminal Procedure  
20 that on August 21, 2015, the above-named defendant was arrested based upon an arrest warrant issued  
21 upon an

22  Indictment (copy attached)  
23  Information  
24  Criminal Complaint  
25  Other (describe) \_\_\_\_\_

26 pending in the Eastern District of California, Case Number 1:14CR00158-LJO-SKO.

1  
2 In that case, the defendant is charged with a violation of Title 8 United States Code, Section  
3 1326(a) and (b)(2).

4 Description of Charges: Deported Alien Found in the United States.

5  
6 Respectfully Submitted,  
7 MELINDA HAAG  
8 UNITED STATES ATTORNEY

9   
10 WILLIAM J. EDELMAN  
11 Special Assistant U.S. Attorney

12 Date: August 24, 2015

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FILED

AUG 27 2015

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

ANTONIO RENE MARTINEZ,

Defendant.

Case No. 15-mj-71072-JCS-1

Charging District's Case No.

1:14-cr-0158 LJO/ SKO

**COMMITMENT TO ANOTHER DISTRICT**

The defendant has been ordered to appear in the Eastern District of California.

The defendant may need an interpreter for this language: Spanish.

The defendant:  will retain an attorney.

is requesting court-appointed counsel.

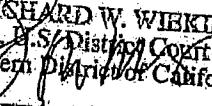
The defendant remains in custody after the initial appearance.

**IT IS ORDERED:** The United States Marshal must transport the defendant, together with a copy of this order, to the charging district and deliver the defendant to the United States Marshal for that district, or to another officer authorized to receive the defendant. The Marshal or officer of the charging district should immediately notify the United States Attorney and the Clerk of the Clerk for that district of the defendant's arrival so that further proceedings may be promptly scheduled. The Clerk of this district must promptly transmit the papers and any bail to the charging district.

**IT IS SO ORDERED.**

Dated: 8/27/2015

  
Joseph C. Spero I hereby certify that the annexed  
Chief Magistrate Judge  
attachment is a true and correct copy  
of the original on file in my office.  
ATTEST:

RICHARD W. WIEKING  
Clerk, U.S. District Court  
Northern District of California  
By 

App.28 ER38  
Date 8/27/15 Deputy Clerk

UNITED STATES DISTRICT COURT

for the

Northern District of California

United States of America

v.

Martinez

Defendant

) Case No. 3:15-71072-JCS

) Charging District's Case No.

FILED

AUG 27 2015

RICHARD W. WICKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WAIVER OF RULE 5 & 5.1 HEARINGS  
(Complaint or Indictment)

I understand that I have been charged in another district, the (name of other court) Eastern District  
of California (Fresno)

I have been informed of the charges and of my rights to:

- (1) retain counsel or request the assignment of counsel if I am unable to retain counsel;
- (2) an identity hearing to determine whether I am the person named in the charges;
- (3) production of the warrant, a certified copy of the warrant, or a reliable electronic copy of either;
- (4) a preliminary hearing within 14 days of my first appearance if I am in custody and 21 days otherwise — unless I am indicted — to determine whether there is probable cause to believe that an offense has been committed;
- (5) a hearing on any motion by the government for detention;
- (6) request transfer of the proceedings to this district under Fed. R. Crim. P. 20, to plead guilty,

I agree to waive my right(s) to:



an identity hearing, production of the warrant, and any preliminary or detention hearing to which I may be entitled in this district. I request that those hearings be held in the prosecuting district, at a time set by that court.

I consent to the issuance of an order requiring my appearance in the prosecuting district where the charges are pending against me.

Date:

8/27/15

Rene Martinez  
Defendant's signature

Geoffrey M. Zell  
Signature of defendant's attorney

Elizabeth Falk  
Printed name of defendant's attorney

DOCUMENTS UNDER SEAL 

TOTAL TIME (mins): 3.M

MAGISTRATE JUDGE 1:14-cr-00158	REPLACES Document 3 Filed 08/31/2014 by Karen L. Hom	REPORTER/ETD of 11 FTR: 9:50-9:53
MAGISTRATE JUDGE JOSEPH C. SPERO	DATE August 27, 2015	NEW CASE <input type="checkbox"/> CASE NUMBER 3:15-mj-71072-JCS-1

DEFENDANT Antonio Rene Martinez	AGE Y	CUST P	ATTORNEY FOR DEFENDANT Elizabeth Falk	PD. <input checked="" type="checkbox"/> RET. <input type="checkbox"/> APPT. <input type="checkbox"/>
------------------------------------	----------	-----------	--	---

U.S. ATTORNEY William Edelman	INTERPRETER Melinda Basker - Spanish	FIN. AFFT SUBMITTED <input type="checkbox"/>	COUNSEL APPT'D <input type="checkbox"/>
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PROBATION OFFICER	PRETRIAL SERVICES OFFICER Denise Mancia	DEF ELIGIBLE FOR APPT'D COUNSEL <input type="checkbox"/>	PARTIAL PAYMENT OF CJA FEES <input type="checkbox"/>
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PROCEEDINGS SCHEDULED TO OCCUR				
<input type="checkbox"/> INITIAL APPEAR	<input type="checkbox"/> PRELIM HRG	<input type="checkbox"/> MOTION	<input type="checkbox"/> JUGMT & SENTG	<input checked="" type="checkbox"/> STATUS TRIAL SET
<input type="checkbox"/> I.D. COUNSEL	<input type="checkbox"/> ARRAIGNMENT	<input type="checkbox"/> BOND HEARING	<input type="checkbox"/> IA REV PROB. or or S/R	<input type="checkbox"/> OTHER
<input checked="" type="checkbox"/> DETENTION HRG not held	<input checked="" type="checkbox"/> ID / REMOV HRG not held	<input type="checkbox"/> CHANGE PLEA	<input type="checkbox"/> PROB. REVOC.	<input type="checkbox"/> ATTY APPT HEARING

<input type="checkbox"/> ADVISED OF RIGHTS	<input type="checkbox"/> ADVISED OF CHARGES	<input type="checkbox"/> NAME AS CHARGED IS TRUE NAME	<input type="checkbox"/> TRUE NAME: .
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ARRAIGNMENT				
<input type="checkbox"/> ARRAIGNED ON INFORMATION	<input type="checkbox"/> ARRAIGNED ON INDICTMENT	<input type="checkbox"/> READING WAIVED SUBSTANCE	<input type="checkbox"/> WAIVER OF INDICTMENT FILED	

<input type="checkbox"/> RELEASED ON O/R	<input type="checkbox"/> ISSUED APPEARANCE BOND	AMT OF SECURITY \$	SPECIAL NOTES	<input type="checkbox"/> PASSPORT SURRENDERED DATE:
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PROPERTY TO BE POSTED <input type="checkbox"/> CASH \$	CORPORATE SECURITY <input type="checkbox"/>		REAL PROPERTY: <input type="checkbox"/>	
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<input type="checkbox"/> MOTION FOR DETENTION	<input type="checkbox"/> PRETRIAL SERVICES REPORT	<input type="checkbox"/> DETAINED	<input type="checkbox"/> RELEASED	<input checked="" type="checkbox"/> DETENTION HEARING AND FORMAL FINDINGS WAIVED w/o prej	<input checked="" type="checkbox"/> REMANDED TO CUSTODY
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ORDER REMOVED TO THE DISTRICT OF Eastern District of CA (Fresno)

<input type="checkbox"/> CONSENT ENTERED	<input type="checkbox"/> NOT GUILTY	<input type="checkbox"/> GUILTY	GUILTY TO COUNTS: <input type="checkbox"/>	
<input type="checkbox"/> PRESENTENCE REPORT ORDERED	<input type="checkbox"/> CHANGE OF PLEA	<input type="checkbox"/> PLEA AGREEMENT FILED	OTHER: .	

CONTINUANCE				
TO:	<input type="checkbox"/> ATTY APPT HEARING	<input type="checkbox"/> BOND HEARING	<input type="checkbox"/> STATUS RE: CONSENT	<input type="checkbox"/> TRIAL SET
AT:	<input type="checkbox"/> SUBMIT FINAN. AFFIDAVIT	<input type="checkbox"/> PRELIMINARY HEARING	<input type="checkbox"/> CHANGE OF PLEA	<input type="checkbox"/> STATUS
BEFORE HON.	<input type="checkbox"/> DETENTION HEARING	<input type="checkbox"/> ARRAIGNMENT	<input type="checkbox"/> MOTIONS	<input type="checkbox"/> JUDGMENT & SENTENCING
TIME WAIVED	<input type="checkbox"/> TIME EXCLUDABLE UNDER 18 USC 3161	<input type="checkbox"/> IDENTITY / REMOVAL HEARING	<input type="checkbox"/> PRETRIAL CONFERENCE	<input type="checkbox"/> PROB/SUP REV. HEARING

Dft waived his Identity/Removal Hearing.

DOCUMENTS UNDER SEAL 

TOTAL TIME (s): 6 M

MAGISTRATE JUDGE 1:14-cr-00158 DE USK OLERACument 3 Filed 08/24/2015 Page 1 of 11

MINUTE ORDER

Karen L. Hom

FTR: 9:34-9:40

MAGISTRATE JUDGE  
JOSEPH C. SPERODATE  
August 24, 2015NEW CASE  CASE NUMBER  
3:15-mj-71072-JCS-1

APPEARANCES				
DEFENDANT Antonio Rene Martinez	AGE Y	CUST P	ATTONEY FOR DEFENDANT Elizabeth Falk	PD. <input checked="" type="checkbox"/> RET. <input type="checkbox"/> APPT. <input type="checkbox"/>
U.S. ATTORNEY Will Edelman	INTERPRETER Melinda Basker - Spanish		<input checked="" type="checkbox"/> FIN. AFFT SUBMITTED	<input checked="" type="checkbox"/> COUNSEL APPT'D
PROBATION OFFICER	PRETRIAL SERVICES OFFICER Katrina Chu		DEF ELIGIBLE FOR APPT'D. COUNSEL	<input checked="" type="checkbox"/> PARTIAL PAYMENT OF CJA FEES
PROCEEDINGS SCHEDULED TO OCCUR				
<input checked="" type="checkbox"/> INITIAL APPEAR Rule 6-EDCA	<input type="checkbox"/> PRELIM HRG	<input type="checkbox"/> MOTION	<input type="checkbox"/> JUGMT & SENTG	<input type="checkbox"/> STATUS TRIAL SET
<input type="checkbox"/> I.D. COUNSEL	<input type="checkbox"/> ARRAIGNMENT	<input type="checkbox"/> BOND HEARING	<input type="checkbox"/> IA REV PROB. or or S/R	<input type="checkbox"/> OTHER
<input type="checkbox"/> DETENTION HRG	<input type="checkbox"/> ID / REMOV HRG	<input type="checkbox"/> CHANGE PLEA	<input type="checkbox"/> PROB. REVOC.	<input type="checkbox"/> ATTY APPT HEARING
INITIAL APPEARANCE				
<input checked="" type="checkbox"/> ADVISED OF RIGHTS	<input checked="" type="checkbox"/> ADVISED OF CHARGES	<input type="checkbox"/> NAME AS CHARGED IS TRUE NAME	<input type="checkbox"/> TRUE NAME:	
ARRAIGNMENT				
<input type="checkbox"/> ARRAIGNED ON INFORMATION	<input type="checkbox"/> ARRAIGNED ON INDICTMENT	<input checked="" type="checkbox"/> READING WAIVED SUBSTANCE	<input type="checkbox"/> WAIVER OF INDICTMENT FILED	
RELEASE				
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PROPERTY TO BE POSTED CASH \$		CORPORATE SECURITY <input type="checkbox"/>		REAL PROPERTY: <input type="checkbox"/>
<input checked="" type="checkbox"/> MOTION FOR DETENTION	<input type="checkbox"/> PRETRIAL SERVICES REPORT	<input type="checkbox"/> DETAINED	<input type="checkbox"/> RELEASED	<input type="checkbox"/> DETENTION HEARING AND FORMAL FINDINGS WAIVED <input checked="" type="checkbox"/> REMANDED TO CUSTODY
ORDER REMOVED TO THE DISTRICT OF				
PLEA				
<input type="checkbox"/> CONSENT ENTERED	<input type="checkbox"/> NOT GUILTY	<input type="checkbox"/> GUILTY	GUILTY TO COUNTS: <input type="checkbox"/>	
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CONTINUANCE				
TO: 8/27/15	<input type="checkbox"/> ATTY APPT HEARING	<input type="checkbox"/> BOND HEARING	<input type="checkbox"/> STATUS RE: CONSENT	<input type="checkbox"/> TRIAL SET
AT: 9:30 AM	<input type="checkbox"/> SUBMIT FINAN. AFFIDAVIT	<input type="checkbox"/> PRELIMINARY HEARING	<input type="checkbox"/> CHANGE OF PLEA	<input type="checkbox"/> STATUS
BEFORE HON. Spero	<input checked="" type="checkbox"/> DETENTION HEARING	<input type="checkbox"/> ARRAIGNMENT	<input type="checkbox"/> MOTIONS	<input type="checkbox"/> JUDGMENT & SENTENCING
<input type="checkbox"/> TIME WAIVED	<input type="checkbox"/> TIME EXCLUDABLE UNDER 18 USC 3161	<input checked="" type="checkbox"/> IDENTITY / REMOVAL HEARING	<input type="checkbox"/> PRETRIAL CONFERENCE	<input type="checkbox"/> PROB/SUP REV. HEARING
ADDITIONAL PROCEEDINGS				

Ms. Falk will contact Pretrial if she wishes to have Dft interviewed.

cc: JCS

ER41

## WARRANT OF ARREST

Case 1:14-cr-00158 UNITED STATES DISTRICT COURT Page 15 of 15 09/15 15P1 3248

INSTRUCTIONS: Forward copies Number 1 AND 2 intact to the US Marshal. Forward copy Number 3 to US Attorney's office. Retain number 4 copy. If applicable, use Number 4 copy to withdraw warrant. After completion of return US Marshal will distribute copies Number 1 through 3 as appropriate.

JULY 09 2015

Name of Person ANTONIO RENE MARTINEZ	DISTRICT OF ISSUE CLERK U.S. EASTERN DISTRICT OF CALIFORNIA	Docket Number 1:14 CR 00158 LJO SKO
---	--	--

DEPUTY CLERK

## REASON FOR WARRANT

<input checked="" type="checkbox"/> Indictment	<input type="checkbox"/> Information	<input type="checkbox"/> OTHER (SPECIFY)
8/1326	Deported Alien Found in United States	NO BAIL
Date: JULY 31, 2014	DEPUTY CLERK: <b>S. MARTIN-GILL</b>	Signature of issuing official: <i>S. Martin-Gill</i>

TO: ANY US MARSHAL OR ANY OTHER AUTHORIZED OFFICER

You are hereby commanded to arrest the above named person and bring this individual forthwith before the nearest available United States Court or (if applicable) before the nearest United States Magistrate in the arresting district to answer the above stated charge(s) in the indictment or information..

THE US MARSHAL IN THE DISTRICT OF ARREST IS HEREBY FURTHER AUTHORIZED AND COMMANDED TO TAKE CUSTODY OF THE ABOVE NAMED PERSON. IF AFTER BRINGING THE PERSON BEFORE ANY APPLICABLE JUDICIAL OFFICER IN THE MANNER INDICATED ABOVE, THE INDIVIDUAL FAILS TO FURNISH BAIL FOR APPEARANCE PER ORDERS AND DIRECTIONS OF SUCH JUDICIAL OFFICER, THE US MARSHAL IS AUTHORIZED AND COMMANDED TO KEEP SAFELY THIS INDIVIDUAL UNTIL DISCHARGED IN DUE COURSE OF LAW.

## RETURN

I certify I executed this warrant and such other order directed herein as shown below.

Date Received	Arresting Agency (if not US Marshal)	Signature of Arresting Agent (if not US Marshal)
8/26/15		
Date Committed	Place of Confinement	<input checked="" type="checkbox"/> Executed <input type="checkbox"/> Unexecuted <input type="checkbox"/> Withdrawn
Date of Return	Name of US Marshal <i>Summons</i>	Signature of US Marshal or Deputy <i>S. Martin-Gill</i>

MA FORM 6 EASTERN DISTRICT OF CALIFORNIA

COPY NUMBER 1 - ACTION COPY

COPY NUMBER 2 - CONFINEMENT AGENCY COPY

COPY NUMBER 3 - US ATTORNEY COPY

COPY NUMBER 4 - CLERKS OFFICE COPY App.32

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

— 500 —

4 UNITED STATES OF AMERICA, ) Case No. 1:14-cr-00158-LJO-SKO  
5 Plaintiff, )  
6 vs. ) Fresno, California  
7 ANTONIO RENE MARTINEZ, ) Thursday, September 10, 2015  
8 Defendant. ) 1:24 P.M.  
 )  
 ) Hearing re: Arraignment and  
 ) plea.  
 )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SHEILA K. OBERTO  
UNITED STATES MAGISTRATE JUDGE

## APPEARANCES:

12 For Plaintiff: BRIAN ENOS  
13 U.S. Attorney's Office  
14 2500 Tulare Street, Suite 4401  
15 Fresno, CA 93721  
16 (559) 497-4000

15 For Defendant: PEGGY SASSO  
16 Federal Defender's Office  
17 2300 Tulare Street, Suite 330  
Fresno, CA 93721  
(559) 487-5561

## THE INTERPRETER: BECKY RUBENSTEIN

20 Court Recorder: OTILIA ROSALES  
21 U.S. District Court  
2500 Tulare Street, Suite 1501  
Fresno, CA 93721  
(559) 499-5928

25 Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 FRESNO, CALIFORNIA, THURSDAY, SEPTEMBER 10, 2015, 1:24 P.M.

3 (Call to order of the Court.)

4 THE COURT: Good afternoon. Please be seated. Thank  
5 you. We are on the calendar on Thursday, September 10th and I  
6 will be deviating from the order that is listed on the  
7 calendar. So I will first call -- actually I'll first call the  
8 first matter on the calendar which is United States v. Antonio  
9 Rene Martinez, Case No. 14-cr-158. If we can please have the  
10 parties' appearances?

11. MS. SASSO: Peggy Sasso from the Federal Defender's  
12. Office.

13 MR. ENOS: Brian Enos for the United States.

14 THE COURT: Good afternoon, Ms. Sasso.

15 Good afternoon, Mr. Enos.

16. And which of you, sir, is Antonio Rene Martinez?

17 MS. SASSO: I believe he's on the --

18 THE COURT: Good afternoon to you. Is your name  
19 Antonio Rene Martinez, sir?

20 THE DEFENDANT: Yes, that's right.

21 THE COURT: Mr. Martinez, an indictment has been  
22 filed against you dated July 13th, 2014 charging you with being  
23 a deported alien in violation of 8 USC Section 1326(a) and  
24 (b) (2). This charge carries a maximum possible penalty of up  
25 to 20 years in custody and a fine of up to \$250,000.

1                   Do you understand what you're charged with and the  
2 maximum possible penalties that could be imposed if you're  
3 convicted of this offense?

4                   THE DEFENDANT: Yes.

5                   THE COURT: Thank you. You have the right to be  
6 represented by an attorney. If you can't afford an attorney I  
7 will appoint an attorney for you, and I have reviewed your  
8 financial affidavit and find that you are eligible for  
9 appointment of counsel.

10                  You have the right to remain silent. Anything you  
11 say can and will be used against you, and if you are not a U.S.  
12 citizen you're hereby advised that you have the right to  
13 request that the United States notify a consular of your  
14 country of citizenship that you have been arrested.

15                  Ms. Sasso, on behalf of Mr. Martinez have you  
16 received a copy -- first of all, are you accepting appointment?

17                  MS. SASSO: Yes, Your Honor. We received a copy of  
18 the indictment, waive further reading of the indictment,  
19 further advisement of his statutory and constitutional rights,  
20 enter a plea of not guilty and request discovery.

21                  THE COURT: Thank you very much. The Court accepts  
22 the not guilty plea, orders discovery within 14 days pursuant  
23 to Local Rule 440.

24                  Is the government requesting reciprocal discovery,  
25 Mr. Enos?

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8 Attorneys for Defendant ANTONIO RENE MARTINEZ  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Case No. 1:14-CR-158 LJO SKO

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2 Dated: September 25, 2015  
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Respectfully Submitted,  
Law Office of Kevin G. Little

5 /s/ Kevin G. Little  
6

7 By: Kevin G. Little  
8 Attorney for Defendant  
9 Antonio Rene Martinez  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
HON. LAWRENCE J. O'NEILL

UNITED STATES OF AMERICA, } 1:14-cr-158 LJO-SKO  
Plaintiff, } Status Conference  
vs. }  
ANTONIO RENE MARTINEZ, }  
Defendant. }

Fresno, California

Monday, December 14, 2015

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES OF COUNSEL:

For the Government:

KIMBERLY SANCHEZ  
Assistant U.S. Attorney  
2500 Tulare Street, Rm. 4401  
Fresno, California 93721

For the Defendant:

LAW OFFICE OF KEVIN G. LITTLE  
Post Office Box 8656  
Fresno, CA 93747  
BY: VIRNA SANTOS,  
Specially Appearing

REPORTED BY: PEGGY J. CRAWFORD, RDR, CRR, Official Reporter

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

1 Monday, December 14, 2015 Fresno, California  
2 8:56 a.m.

3 (The following proceedings were had with the aid of  
4 Certified Spanish Court Interpreter JUAN CARLOS MORALES,  
5 oath on file.)

6 THE COURT: Number 11 on calendar, Antonio Rene  
7 Martinez, Is that you, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: Your appearances, please.

10 MS. SANTOS: Good morning, your Honor. Virna Santos  
11 specially appearing for Attorney Kevin Little, on behalf of  
12 Mr. Antonio Martinez, who is in custody and being assisted by  
13 the Spanish interpreter.

14 THE COURT: Ms. Sanchez, are you appearing on this  
15 one for Ms. Giacomazzi?

16 MS. SÁNCHEZ: I am.

17 THE COURT: What's your request?

18 MS. SANTOS: Your Honor, in this case, Mr. Little has  
19 been in touch with Ms. Giacomazzi, and he has informed her  
20 that Mr. Martinez's attorney in San Jose is working on  
21 attacking some of his state convictions that will affect his  
22 sentence in this case.

23 They are jointly asking that this case be taken off  
24 the fast track, and that he be allowed an additional 90 days  
25 to accomplish that, or the local attorney be allowed 90 days.

1 We agreed on an April 4th date to return to court.

2 THE COURT: Does that affect the offer?

3 MS. SANTOS: According to Ms. Giacomazzi, no.

4 MS. SANCHEZ: I agree with the continuance. I  
5 haven't spoken with Ms. Giacomazzi about the offer.

6 THE COURT: April 4, 8:30.

7 MS. SANTOS: Yes, sir.

8 THE COURT: Time waiver based on accomplishment of  
9 the things you have indicated?

10 MS. SANTOS: Yes, your Honor.

11 THE COURT: Done.

12 MS. SANTOS: Thank you.

13 MS. SANCHEZ: Thank you, your Honor.

14 (The proceedings were concluded at 8:57 a.m.)

15 I, PEGGY J. CRAWFORD, Official Reporter, do hereby  
16 certify the foregoing transcript as true and correct.

17  
18 Dated: 24th of January, 2019 /s/ Peggy J. Crawford  
19 PEGGY J. CRAWFORD, RDR-CRR  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

- 100 -

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE LAWRENCE J. O'NEILL  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

11 For the Plaintiff: HON. McGREGOR W. SCOTT  
12 United States Attorney by  
13 MR. HENRY CARBAJAL, III  
14 Assistant U.S. Attorney  
2500 Tulare Street, Room 4401  
Fresno, CA 93721

15 For the Defendant: LAW OFFICE OF KEVIN G. LITTLE by  
16 MR. KEVIN GERARD LITTLE  
Post Office Box 93747  
Fresno, CA 93747

17 Court Recorder: OTILIA ROSALES  
18 U.S. District Court  
19 2500 Tulare Street, Suite 1501  
Fresno, CA 93721  
(559)499-5928

20 Transcribed by: JENNIFER COULTHARD, RMR, CRR  
21 Official Court Reporter  
22 501 I Street, Suite 4-200  
23 Sacramento, CA 95814  
(312)617-9858  
Jenrmrcrr2@gmail.com

24 Proceedings recorded by electronic sound recording; transcript produced by official court reporter

1 FRESNO, CALIFORNIA, MONDAY, APRIL 11, 2016

2 --00--

3 (In open court.)

4 THE COURT: Okay. No. 11 is Antonio Martinez.

5 MR. CARBAJAL: Good morning, Your Honor; Henry  
6 Carbajal standing in for Vincenza Rabenn on behalf of the  
7 United States.

8 MR. LITTLE: Good morning, Your Honor; Kevin Little on  
9 behalf of the defendant, Antonio Rene Martinez.

10 THE COURT: Okay. What are we going to do?

11 MR. LITTLE: Your Honor, the reason why this case was  
12 postponed previously was because there are related state court  
13 proceedings to vacate some of my client's prior convictions  
14 that will have a very important bearing on this case. There is  
15 a hearing in the state court on the 25th of April, and I would  
16 ask that this case be continued for purposes of change of plea  
17 until after that hearing, the next available hearing that this  
18 Court has.

19 THE COURT: What was the date again?

20 MR. LITTLE: April 25th.

21 THE COURT: What's the government's position?

22 MR. CARBAJAL: No objection, Your Honor, provided the  
23 Court finds good cause to exclude time for the reasons stated  
24 by defense counsel, including continuing investigation.

25 THE COURT: So you're actually -- are you asking for

1 May 2nd?

2 MR. LITTLE: May 2nd, if that's available, that would  
3 be fine, I think, Your Honor.

4 THE COURT: Will that work, Irma?

5 Okay. May 2nd then at 8:30 for a change of plea or a  
6 trial setting conference.

7 And on the issue of exclusion of time is the defense  
8 agreeing that it's needed for not only strategical purposes but  
9 also for further investigation?

10 MR. CARBAJAL: Yes, Your Honor.

11 THE COURT: Court finds good cause.

12 MR. CARBAJAL: Thank you, Your Honor.

13 THE COURT: Okay. Thanks.

14 (Concluded at 2:24 p.m.)

15

16 C E R T I F I C A T E

17

18 I, court-approved transcriber, certify that the foregoing  
19 is a correct transcript from the official electronic recording  
20 of the proceedings in the above-entitled matter.

21

22

/s/ JENNIFER L. COULTHARD

February 6, 2019

23

DATE

24

JENNIFER L. COULTHARD, RMR, CRR  
Official Court Reporter

25

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
HON. LAWRENCE J. O'NEILL

UNITED STATES OF AMERICA, }  
Plaintiff, }  
vs. }  
ANTONIO RENE MARTINEZ, }  
Defendant. }

1:14-cr-158 LJO-SKO  
Status Conference

Fresno, California

Monday, May 2, 2016

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES OF COUNSEL:

For the Government: **MIA GIACOMAZZI**  
Assistant U.S. Attorney  
2500 Tulare Street, Rm. 4401  
Fresno, California 93721

For the Defendant: **LAW OFFICE OF KEVIN G. LITTLE**  
Post Office Box 8656  
Fresno, CA 93747  
BY: **MICHAEL AED,**  
Specially Appearing

REPORTED BY: PEGGY J. CRAWFORD, RDR, CRR, Official Reporter

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

1 Monday, May 2, 2016

Fresno, California

2 9:04 a.m.

3 THE COURT: Let's call number 8, Antonio Martinez.

4 MS. GIACOMAZZI: Mia Giacomazzi representing the  
5 United States.

6 MR. AED: I think he requires an interpreter, your  
7 Honor.

8 (The following proceedings were had with the aid of  
9 Certified Spanish Court Interpreter GREGORIA LARA, oath  
10 on file.)

11 MR. AED: Good morning, your Honor. Michael Aed.  
12 I'm making a special appearance for Kevin Little for the  
13 defendant, who is present, in custody, being assisted by the  
14 court interpreter in the Spanish language.

15 THE COURT: Can you hear the interpreter, sir?

16 THE DEFENDANT: Yes.

17 THE COURT: What is your name?

18 THE DEFENDANT: Rene Antonio Martinez.

19 THE COURT: We did get an e-mail from Mr. Little  
20 concerning this morning.

21 What's the government's position?

22 MS. GIACOMAZZI: The government's position is that  
23 this was the same position that we have been in for quite  
24 sometime, although Probation, I believe, will need some time  
25 to review the documents submitted by Mr. Little and revise the

1 pre-plea, Presentence Report Investigation Report.

2 The government would also like some time to evaluate  
3 the case as well and discuss with Mr. Little further steps.

4 THE COURT: How long do you need?

5 MR. AED: Your Honor, Mr. Little instructed me a  
6 couple of weeks, but I would have to defer to the government  
7 and Probation in terms of whether or not that will accomplish  
8 what they are trying to get accomplished.

9 THE COURT: How long do you need?

10 MR. AED: I don't think that -- if Mr. Little is  
11 looking to see what's happening with his immigration  
12 proceedings, that's going to take a couple of years.

13 So I mean I would say in 60 days, we will be in a  
14 better position to know whether or not this should be a trial  
15 setting conference or some sort of change your plea.

16 THE COURT: All right. Let's set this for July 18th,  
17 at 8:30, and at that time, it is either going to be a change  
18 of plea or it is going to be a trial setting conference, but  
19 no more continuances.

20 And make it clear, if you would.

21 MR. AED: I will make it perfectly clear with  
22 Mr. Little.

23 THE DEFENDANT: If I accepted right now, the plea  
24 bargain, what if I want to sign today?

25 MR. AED: If I could speak with him briefly, your

1 Honor?

2 THE COURT: Okay.

3 MS. GIACOMAZZI: The government is acceptable.

4 THE COURT: Just so you know, what is the -- I assume  
5 there is a 5K3 motion.

6 MS. GIACOMAZZI: Yes, your Honor.

7 THE COURT: What would be the result of that? Just  
8 so he knows what the real answer to his question is, because  
9 that's what he is asking.

10 MS. GIACOMAZZI: Four-level offer would be 27 months.

11 THE COURT: Okay. So to answer your question,  
12 distilled, you want to know how much time you would get if you  
13 pled guilty today. I think that's your real question, isn't  
14 it?

15 THE DEFENDANT: Yes.

16 THE COURT: 27 months.

17 (Counsel and the defendant conferred off the record.)

18 MR. AED: I have spoken with him, your Honor. The  
19 request would still be July the 18th.

20 THE COURT: All right. Sir, do you understand what  
21 has just happened here?

22 THE DEFENDANT: Yes.

23 THE COURT: And is that acceptable to you?

24 THE DEFENDANT: Yes.

25 THE COURT: And the request, I am gathering, is more

1 legal research, more factual research, and a further attempt  
2 by both counsel to reach a disposition; is that what I'm  
3 hearing?

4 MR. AED: That's fair, your Honor. That's an  
5 accurate representation.

6 MS. GIACOMAZZI: That's right. And the government  
7 would move to exclude time between now and the July 18 status  
8 conference.

9 THE COURT: Granted. The Court finds good cause.  
10 And therefore, on that date, it will be either a  
11 change of plea or trial setting conference.

12 What was the date in July again, Irma?

13 THE CLERK: July 18.

14 THE COURT: Thanks.

15 (The proceedings were concluded at 9:09 a.m.)

16 I, PEGGY J. CRAWFORD, Official Reporter, do hereby  
17 certify the foregoing transcript as true and correct.

18  
19 Dated: 24th of January, 2019 /s/ Peggy J. Crawford  
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25 PEGGY J. CRAWFORD, RDR-CRR

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
HON. LAWRENCE J. O'NEILL

UNITED STATES OF AMERICA, } 1:14-cr-158 LJO-SKO  
Plaintiff, } Status Conference  
VS. }  
ANTONIO RENE MARTINEZ, }  
Defendant. }

Fresno, California

Monday, July 18, 2016

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES OF COUNSEL:

For the Government:

VINCENZA RABENN  
Assistant U.S. Attorney  
2500 Tulare Street, Rm. 4401  
Fresno, California 93721

For the Defendant:

LAW OFFICE OF KEVIN G. LITTLE  
Post Office Box 8656  
Fresno, CA 93747  
BY: KEVIN G. LITTLE

REPORTED BY: PEGGY J. CRAWFORD, RDR, CRR, Official Reporter

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 Monday, July 18, 2016

Fresno, California

2 9:27 a.m.

3 THE COURT: Number 8 on calendar, Antonio Rene  
4 Martinez.

5 (The following proceedings were had with the aid of  
6 Certified Spanish Court Interpreter JAVIER AVELAR, oath  
7 on file.)

8 THE COURT: Your appearances, please.

9 MR. LITTLE: Good morning, your Honor. Kevin Little,  
10 appearing with the defendant, Antonio Rene Martinez, who is  
11 present in custody, being assisted by the Spanish interpreter.

12 MS. RABENN: Vincenza Rabenn for the government.

13 THE COURT: What are we going to do?

14 MR. LITTLE: Your Honor, we are very close to, I  
15 believe, arriving at a plea agreement, but we do not have one  
16 at this point in time.

17 So what I would ask is that we have another hearing  
18 in a couple of weeks, at which time, I fully expect we would  
19 be able to enter a plea in this matter.

20 However, I know we were here on the understanding  
21 that a plea would either be entered today or we would set a  
22 trial date, so I would defer to the Court in that regard.

23 THE COURT: Let me ask this. What is the difference  
24 between your expectation a couple of weeks ago, when we were  
25 here, and now, versus two weeks from now?

1                   MR. LITTLE: Your Honor, I think that we have  
2 narrowed the issues down. There is just one remaining bone of  
3 contention that will resolve one way or the other.

4                   THE COURT: And there is something specific and  
5 objective that you are going to do between now and then  
6 together, apparently, to resolve that one way or the other?

7                   MR. LITTLE: Yes, your Honor.

8                   THE COURT: Do you join?

9                   MS. RABENN: Yes, your Honor.

10                  THE COURT: Okay. Then why don't we, based on that  
11 representation, put this out to August 1, at 8:30.

12                  MR. LITTLE: Thank you, your Honor.

13                  THE COURT: Does that work?

14                  MS. RABENN: Works for me, your Honor.

15                  THE COURT: Okay. The time will, of course, be  
16 excluded for the purpose of accommodating your request.

17                  MR. LITTLE: Thank you.

18                  (The proceedings were concluded at 9:29 a.m.)

19                  I, PEGGY J. CRAWFORD, Official Reporter, do hereby  
20 certify the foregoing transcript as true and correct.

21  
22                  Dated: 24th of January, 2019                   /s/ Peggy J. Crawford  
23   PEGGY J. CRAWFORD, RDR-CRR

24  
25

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
HON. LAWRENCE J. O'NEILL

UNITED STATES OF AMERICA, }  
Plaintiff, }  
vs. }  
ANTONIO RENE MARTINEZ, }  
Defendant.

} 1:14-cr-158 LJO-SKO  
CHANGE OF PLEA OR TRIAL  
SETTING CONFERENCE

Fresno, California

Monday, August 1, 2016

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES OF COUNSEL:

For the Government: VINCENTA RABENN  
Assistant U.S. Attorney  
2500 Tulare Street, Rm. 4401  
Fresno, California 93721

For the Defendant: LAW OFFICE OF KEVIN G. LITTLE  
Post Office Box 8656  
Fresno, CA 93747  
BY: KEVIN G. LITTLE

REPORTED BY: PEGGY J. CRAWFORD, RDR, CRR, Official Reporter

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 Monday, August 1, 2016

Fresno, California

2 8:30 a.m.

3 THE COURT: Let's call number 1 on calendar, Antonio  
4 Martinez.

5 (The following proceedings were had with the aid of  
6 Certified Spanish Court Interpreter REBECCA RUBENSTEIN,  
7 oath on file.)

8 MS. RABENN: Good morning, your Honor. Vincenza  
9 Rabenn for the government.

10 MR. LITTLE: Good morning, your Honor. Kevin Little  
11 with the defendant, who is here, present in custody, being  
12 assisted by the Spanish language interpreter.

13 THE COURT: All right. What are we going to do?

14 MR. LITTLE: Your Honor, I have been advised that  
15 Mr. Martinez has decided to retain private counsel, and so I  
16 am not in a position to move forward with anything in terms of  
17 a plea agreement or the setting of a trial date. It's a  
18 person from Fresno.

19 THE COURT: Who have you retained?

20 MR. LITTLE: His name is Hristo Bijev.

21 THE COURT: Is that person here?

22 MR. LITTLE: He is not. And I understand he is not  
23 going to be here today.

24 THE COURT: Well, have you retained him already?

25 THE DEFENDANT: Yes. My family is talking with him

1 outside.

2 THE COURT: You mean here today?

3 MR. LITTLE: No.

4 THE COURT: That tells me that you have not yet  
5 retained him. It tells me you are trying to retain him. Is  
6 that accurate?

7 THE DEFENDANT: Yes.

8 THE COURT: Well, we move on. We will set a trial  
9 date.

10 MR. LITTLE: Yes, your Honor.

11 THE COURT: What date would you like?

12 MR. LITTLE: Your Honor, if we could --

13 THE COURT: I was going to ask the government if they  
14 are going to be in the case. You are probably not.

15 What date?

16 MS. RABENN: Your Honor, as late as possible. I'm  
17 assuming that the new lawyer will need some time to prepare.

18 THE COURT: Well, the problem here is that I can't  
19 make a finding of good cause to exclude time based on what I  
20 have before me.

21 MS. RABENN: Understood.

22 THE COURT: I have a representation that they are  
23 trying to retain somebody, but that, in and of itself, is not  
24 good cause to exclude time, so I bring that up just as a  
25 caution.

1 MS. RABENN: One moment.

2 (Counsel conferred off the record.)

3 MS. RABENN: It looks like we have the full time  
4 under the Speedy Trial Act, so 45 or 60 days would work for  
5 the government.

6 THE COURT: All right. How about September 27? And  
7 if you get contacted by new counsel because new counsel is in,  
8 you might do everything you can to push hard and explain this  
9 has got to be on calendar immediately, and then put it on the  
10 following Monday so we bring it back in and figure out exactly  
11 what we are going to do so you are not in a situation of  
12 wondering whether or not time is going to be excluded or will  
13 be pushed out for good reason so you don't get prepared.

14 Fair enough?

15 MS. RABENN: Thank you, your Honor. I will do that.

16 MR. LITTLE: Your Honor, the only thing I would add  
17 is if, for some reason, the other attorney does not come in  
18 the case, September 27th is not available on my calendar for  
19 trial.

20 THE COURT: What's the very first day on your  
21 calendar it is?

22 MR. LITTLE: Probably the second week of October.

23 THE COURT: Well --

24 MR. LITTLE: But that's beyond the time.

25 THE COURT: Well, it wouldn't necessarily be. You

1 are still counsel, and if your position is you can't be  
2 prepared because you are not available, I can make a finding  
3 of good cause there, and we set it for October 12th.

4 MR. LITTLE: Thank you, your Honor.

5 THE COURT: 10th is a holiday, 11th is the Tuesday,  
6 but that would be the first day of the week, so I would have  
7 criminal that day. So October 12th, and how does that work  
8 out for you?

9 MS. RABENN: That works fine for me.

10 THE COURT: Let's do it October 12th. Court makes a  
11 finding that there is good cause to exclude until that date  
12 because you are not available until that date, which means you  
13 are representing that you could not be prepared for trial  
14 before that date. Is that your representation?

15 MR. LITTLE: That is, your Honor. I have another  
16 trial starting during that time in Madera County.

17 THE COURT: That's my finding then, and time will be  
18 excluded until that date.

19 MR. LITTLE: Thank you.

20 (The proceedings were concluded at 8:37 a.m.)

21 I, PEGGY J. CRAWFORD, Official Reporter, do hereby  
22 certify the foregoing transcript as true and correct.

23  
24 Dated: 24th of January, 2019 /s/ Peggy J. Crawford  
25 PEGGY J. CRAWFORD, RDR-CRR

FILED

**UNITED STATES DISTRICT COURT**  
**Eastern District of California**

CLERK, U.S. DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA

BY

DEPUTY CLERK

UNITED STATES OF AMERICA  
 v.

ANTONIO RENE MARTINEZ

## JUDGMENT IN A CRIMINAL CASE

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

Case Number: 1:14CR00158-001

Defendant's Attorney: Kevin G. Little, Appointed

## THE DEFENDANT:

pleaded guilty to count(s) 1 of the Indictment.  
 pleaded nolo contendere to count(s) \_\_\_\_ which was accepted by the court.  
 was found guilty on count(s) \_\_\_\_ after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense (s):

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
8 USC 1326(a)	Deported Alien found in The United States	June 15, 2014	One

The defendant is sentenced as provided in pages 2 through 4 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) \_\_\_\_ and is discharged as to such count(s).  
 Count (s) \_\_\_\_ dismissed on the motion of the United States.  
 Indictment is to be dismissed by District Court on motion of the United States.  
 Appeal rights given.  Appeal rights waived.

IT IS FURTHER ORDERED that the defendant shall 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 or fine, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

8/29/2016

Date of Imposition of Judgment

/s/ Lawrence J. O'Neill

*Lawrence J. O'Neill*

Signature of Judicial Officer

Lawrence J. O'Neill, United States District Judge

Name &amp; Title of Judicial Officer

9/2/2016

Date

AO 245B-CAED(Rev. 09/2011) Sheet 2 - Imprisonment

DEFENDANT: ANTONIO RENE MARTINEZ  
CASE NUMBER: 1:14CR00158-001

Page 2 of 4

## IMPRISONMENT

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

No TSR: Defendant shall cooperate in the collection of DNA.

The court makes the following recommendations to the Bureau of Prisons:  
The Court recommends that the defendant be incarcerated in Northern California or in a California facility, but only insofar as this accords with security classification and space availability.

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 \_\_\_\_ 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 \_\_\_\_ on \_\_\_\_  
[ ] as notified by the United States Marshal.  
[ ] as notified by the Probation or Pretrial Services Officer.  
If no such institution has been designated, to the United States Marshal for this district.

## RETURN

I have executed this judgment as follows:

---

---

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

---

United States Marshal

---

By Deputy United States Marshal

## AO 245B-CAED(Rev. 09/2011) Sheet 5 - Criminal Monetary Penalties

DEFENDANT: ANTONIO RENE MARTINEZ  
CASE NUMBER: 1:14CR00158-001

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## 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>
<b>TOTALS</b>	\$100	\$0	\$0

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 victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
<b>Totals</b>	\$ _____	\$ _____	

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:

If incarcerated, payment of the fine is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than \$25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

\*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.

## AO 245B-CAED (Rev. 09/2011) Sheet 6 - Schedule of Payments

DEFENDANT: ANTONIO RENE MARTINEZ  
CASE NUMBER: 1:14CR00158-001

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## SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A.  Lump sum payment of \$ 100.00 due immediately, balance due  
 Not later than \_\_\_, or  
 in accordance  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 \_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_ over a period of \_\_\_ (e.g. months or years), to commence \_\_\_ (e.g. 30 or 60 days) after the date of this judgment; or

D.  Payment in equal \_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_ over a period of \_\_\_ (e.g. months or years), to commence \_\_\_ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or

E.  Payment during the term of supervised release/probation will commence within \_\_\_ (e.g. 30 or 60 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:

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

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

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:

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.

**FILED**

Sep 01, 2017

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

1 Antonio Rene Martinez  
2 Register No. 20735-111  
3 Taft Correctional Institution  
P.O. Box 7001  
3 Taft California 93268

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SEP - 1 2017

EASTERN DISTRICT OF CA  
FRESNO SUPERVISION

4

5 Defendant proceeding Pro-Se

6

7 UNITED STATES OF AMERICA  
EASTERN DISTRICT OF CALIFORNIA

8

9 UNITED STATES OF AMERICA ) Case No. 1:14-CR-158-LJO-SKO-1  
10 ) MOTION UNDER 28 U.S.C. § 2255  
Vs. ) TO VACATE, SET ASIDE OR CORRECT SENTENCE  
11 ) BY A PERSON IN FEDERAL CUSTODY  
12 ANTONIO RENE MARTINEZ )

13

14 Defendant hereby submits this motion , pursuant to 28 U.S.C. § 2255  
15 additionally Defendant humbly request and reserve leave the Court to  
16 supplement Amend this motion, after the transcripts of the Court preconviction  
17 proceedings are obtained.

18

19 Submitted this 29, of August 2017

*Rene Antonio Martinez*  
20 Antonio Rene Martinez

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