

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

IDANIA RENTERIA MADRID,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Respectfully submitted,

Steve Hershberger, Attorney at Law
Texas State Bar # 09543950
600 No. Marienfeld St., Ste 1035
432-570-4014

Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether the District Court excessively sentenced Petitioner to consecutive incarceration and deprived the Petitioner of liberty within the terms of 18 U.S.C. 3583 (c) and (d) with Petitioner having to serve added detention from immigration removal.

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IN THE SUPREME COURT OF THE UNITED STATES

IDANIA RENTERIA MADRID,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

The Petitioner, IDANIA RENTERIA MADRID, Appellant in the United States Court of Appeals for the Fifth Circuit in Case No. 21-50713 and the Defendant in Case No. MO-16-CR-244, submits this Petition for Writ of Certiorari and respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on April 06, 2022.

OPINION BELOW

On April 06, 2022, the United States Court of Appeals for the Fifth Circuit entered its Opinion affirming the verdict guilty returned against Petitioner. A copy of the Opinion is attached as Appendix A.

The District Court's Criminal Judgment is attached as Appendix B. A copy of the Judgment from Case No. MO-21-CR-88 is included within Appendix B.

JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code sec. 1254(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states, in pertinent part to the case *sub judice*:

No person...shall be deprived of life, liberty, or property, without due process of law...

18 U.S.C. sec. 3583(d) provides, in part: The Court may order, as a further condition of supervised release, to the extent that such condition-

- (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); ...

STATEMENT OF THE CASE

Petitioner had been serving a term of supervised release arising from a conviction in the United States District Court, Western District of Texas, in Case No. MO-16-CR-244.

On or about March 22, 2021, Petitioner was arrested by sheriff's deputies with the Ector County, Texas Sheriff's Department for a probation violation. Petitioner was booked into the Ector County Detention Center. Detention officers contacted the United States Department of Homeland Security for immigration verification. Officers learned Petitioner had been previously deported.

On or about March 11, 2021, the United States Probation Office for the Western District of Texas, Midland Division filed a Petition for Warrant for Offender Under Supervision. The alleged violation was the subject of the indictment described below, illegal re-entry into the United States.

On or about April 07, 2021, the United States Attorney's Office for the Western District of

Texas, Midland Division filed a one-count indictment against Petitioner, charging her with Illegal Re-Entry After Deportation, in violation of 8 U.S.C. Sec 1326(a). That case was docketed under Case No. MO-21-CR-088.

On or about April 07, 2021, Petitioner entered a plea of guilty to that one-count indictment.

The United States District Court, Western District of Texas, held sentencing on July 14, 2021. On that date, the District Court also considered supervision revocation.

Petitioner pleaded “true” to the allegations in the Petition for Warrant for Offender Under Supervision. The District Court re-sentenced Petitioner to a period of incarceration to be served consecutively to the sentence rendered in Case No. MO-21-CR-088.

The relevant dispositions were:

Case No. MO-16-CR-244	Supervision revocation	14 months
Case No. MO-21-CR-088	Indictment	37 months.

REASON FOR GRANTING THE WRIT

The District Court erred by imposing punishment involving a greater deprivation of liberty than is reasonably necessary to achieve the goal of deterrence, incapacitation and rehabilitation. With the Sentencing Reform Act of 1984, Congress eliminated most forms of parole for a system of supervised release. Johnson v. United States, 529 U.S. 53, 59-60 (2000). Post confinement monitoring is overseen by the sentencing court, rather the Parole Commission. Gozlon-Peretz v. United States, 498 U.S. 395, 400-401 (1991). The sentencing court is authorized to impose a term of supervised release following imprisonment under 18 U.S.C. sec. 3583(a).

The offender is required to abide by certain conditions, some specified and some discretionary. 18 U.S.C. sec. 3583(d). Upon violation of a condition, the sentencing court may

revoke supervised release and require the person to serve in prison for all or part of a term.

18 U.S.C. Sec. 3583(e)(3).

The purpose of supervised release has been variously described as rehabilitation, deterrence, training, treatment, protection of the public and reduction of recidivism. Johnson, 529 U.S. at 59-60. Supervised release was not intended to be imposed for the purposes of punishment or incapacitation, since those purposes will have been served to the extent necessary by the term of imprisonment. Id. at 59. It is the decompression stage between prison and full release. Conditions of supervised release can not involve a greater deprivation of liberty than is reasonably necessary to achieve goals of deterrence, incapacitation and rehabilitation. Goodwin at 572.

A hearing was had in the United States District Court, Western District of Texas, sitting in Midland, Texas. The District Judge read into the record the allegations from the Petition for Warrant for Offender Under Supervision. Petitioner pleaded “true” to the allegations

In employing the plainly unreasonable standard, the United States District Court imposed a greater imposition on liberty than was necessary to meet the objectives of 18 U.S.C. sec. 3583. United States v. Olano, 507 U.S. 725 (1993); Puckett v. United States, 556 U.S. 129, 135 (2009). Error was further compounded by the affirmance of the United States Court of Appeals for the Fifth Circuit.

A district court is directed by 18 U.S.C. sec. 3553(a)(3) and (a)(4)(B) to consider the kinds of sentence available and the applicable sentencing range of the Guidelines or Commission policy statements. United States v. Garza, 706 F.3d 655 (5th Cir. 2013). A special condition must comport with the limits provided in 18 U.S.C. sec. 3583(a). Factors are (1) nature and circumstances of the offense; (2) deterrence; (3) protection of the public; and (4) provision

for training, medical treatment and correctional treatment. A revocation sentence must involve no greater deprivation of liberty than is reasonably necessary to serve the purposes of section 3553; United States v. Ellis, 720 F.3d 220, 225 (5th Cir. 2013). The deprivation of liberty implicates constitutional protection. See Calder v. Bull, 390 Dall. (3 U.S.) 386 (1798).

Here the sentence in the older supervision case is a greater deprivation of liberty than in reasonably necessary to serve its purposes. Accord United States v. Booker, 543 U.S. 270 (2005). The District Court sentenced Petitioner to incarceration in the indicted case and sentenced her to incarceration on the supervision case. The District Court ordered consecutive service of the sentences.

In this case, Petitioner is subject to deportation. Post incarceration in the United States Bureau of Prisons will be subject her to further detention to address her immigration case. Thus, Petitioner will be subjected to three distinct periods of incarceration. This amount of incarceration is unreasonable as it fails to accord the imprisonment provided in the Bureau of Prisons. North Carolina v. Pearce, 395 U.S. 711 (1969).

Therefore, Petitioner requests that the United States Supreme Court grant this Petition for Writ of Certiorari on the ground that the sentencing ordered by the District Court place a greater deprivation on Petitioner's liberty than is necessary.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the Petition for Writ of Certiorari should be granted and prays that the Order Revoking Supervised Release be reversed, and the case be remanded for re-sentencing pertaining to the supervision revocation.

Separately Petitioner prays for such relief, in law or in equity in which she is entitled.

PRAYER FOR RELIEF

Petitioner, IDANIA RENTERIA-MADRID, requests that the Petition for Writ of Certiorari be granted for the reasons stated and that the conviction entered against her be vacated and this case remanded for re-sentencing, and such other relief to which Petitioner would be entitled to receive in law or in equity.

Respectfully submitted,

Steve Hershberger, Attorney at Law
600 No. Marienfeld St., Ste. 1035
Midland, TX 79701
432-570-4014

By: /s/ Steve Hershberger
Steve Hershberger
Texas State Bar # 09543950

Attorney for Petitioner

APPENDIX A
(Opinion of the United States Court of Appeals, for the Fifth Circuit)

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 6, 2022

Lyle W. Cayce
Clerk

No. 21-50713
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

IDANIA RENTERIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:16-CR-244-1

Before KING, COSTA, and HO, *Circuit Judges.*

PER CURIAM:*

Idania Renteria, federal prisoner # 80316-380, appeals the 14-month sentence, which was within the guidelines range, that was imposed on the revocation of her supervised release. She argues that the sentence is substantively unreasonable because it was ordered to be served consecutively

* Pursuant to 5TH CIRCUIT RULE 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 CIRCUIT RULE 47.5.4.

No. 21-50713

to the 37-month sentence she received for the illegal reentry conviction that formed the basis for the revocation of her supervised release. Renteria asserts that because she will likely face administrative detention for immigration proceedings, she will serve three separate periods of incarceration, rendering her revocation sentence multiplicitous.

We review Renteria's revocation sentence to determine if it is "plainly unreasonable." *United States v. Miller*, 634 F.3d 841, 843 (5th Cir. 2011). We review the substantive reasonableness of the sentence for an abuse of discretion, examining the totality of the circumstances. *United States v. Fuentes*, 906 F.3d 322, 325 (5th Cir. 2018).

Renteria's reliance on *United States v. Willis*, 563 F.3d 168 (5th Cir. 2009), is misplaced. In *Willis*, the defendant faced two revocation sentences for what should have been one underlying conviction. *Id.* at 170. Renteria faces only one revocation sentence for one conviction. Separate detention flowing from the civil immigration consequences of her conduct does not make the criminal sentence multiplicitous.

Nor has Renteria shown that when it imposed the revocation sentence, the district court failed to account for a factor that should have received significant weight, gave significant weight to an irrelevant or improper factor, or made a clear error of judgment in balancing the sentencing factors. *See United States v. Badgett*, 957 F.3d 536, 541 (5th Cir.), *cert. denied*, 141 S. Ct. 827 (2020); *see* 18 U.S.C. § 3583(e).

AFFIRMED.

Sincerely,

LYLE W. CAYCE, Clerk

Laney Lampard

By: Laney L. Lampard, Deputy Clerk

Enclosure(s)

Mr. Joseph H. Gay Jr.

Mr. James Steven Hershberger

APPENDIX B

(Order Revoking Supervised Release, and Resentencing of Defendant, United States District Court for the Western District of Texas, Midland Division)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

Plaintiff

VS

(1) IDANIA RENTERIA

Defendant

§
§
§
§
§
§
§

Case No. MO-16-CR-00244-DC

ORDER REVOKING SUPERVISED RELEASE and
RESENTENCING OF DEFENDANT

On this the July 15, 2021, came on to be heard the Government's Motion for Revocation of Supervised Release granted by virtue of Judgment entered on February 14, 2017, in the above numbered and styled cause.

Defendant appeared in person and was represented by attorney of record, Steve Hershberger. The United States was represented by Assistant United States Attorney, Shane Chriesman.

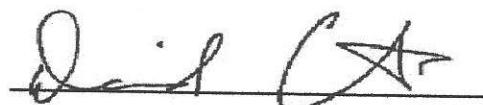
After reviewing the motion and the records in this case as well as hearing testimony and arguments of counsel, the Court is of the opinion that said Defendant has violated the provisions of his Supervised Release and that the ends of justice and the best interests of the public and of the Defendant will not be subserved by continuing said Defendant on Supervised Release. Further, the Court is of the opinion that the Motion for Revocation of Supervised Release should be, and it is hereby **GRANTED**.

IT IS THEREFORE ORDERED that the term of Supervised Release of Defendant named above granted by the Judgment entered on February 14, 2017, and it is hereby **REVOKE**D and **SET ASIDE** and the Defendant is resented as follows:

The Defendant, IDANIA RENTERIA, is hereby committed to the custody of the United States Bureau of Prisons for a term of Fourteen (14) months. This term imprisonment shall run consecutive to MO-21-CR-088. A term of Three (3) years Supervised Release is imposed with all Mandatory and Standard Conditions approved for the Western District of Texas and all conditions previously imposed and not yet completed. This term of supervised release shall run concurrent with MO-21-CR-088.

The Clerk will provide the United States Marshal Service with a copy of this Order and a copy of the Judgment entered on February 14, 2017, to serve as the commitment of the Defendant.

SIGNED this 19th day of July, 2021.



David Counts
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 7:21-CR-00088(1) DC
USM Number: 80316-380

IDANIA RENTERIA-MADRID

Alias(es):

AKA Idana Renteria,; **AKA** Idania M Renteria,; **AKA** Idan IA Renteria,;

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, Idania Renteria-Madrid, was represented by Steve Hershberger.

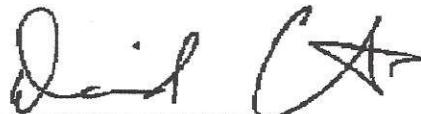
The defendant pled guilty to Count(s) 1, of the Information on April 7, 2021. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count(s)</u>
8 U.S.C. § 1326(a), 8 U.S.C. § 1326(b)(2)	Illegal Re-Entry After Deportation	March 22, 2021	1

As pronounced on July 14, 2021, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this 19th day of July, 2021.



David Counts
United States District Judge

DEFENDANT: IDANIA RENTERIA-MADRID
CASE NUMBER: 7:21-CR-00088(1) DC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **Thirty-Seven (37) months** with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of the Judgment.

United States Marshal

DEFENDANT: IDANIA RENTERIA-MADRID
CASE NUMBER: 7:21-CR-00088(1) DC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Three (3) years**.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court and shall comply with the following additional conditions:

DEFENDANT: IDANIA RENTERIA-MADRID
CASE NUMBER: 7:21-CR-00088(1) DC

CONDITIONS OF SUPERVISED RELEASE

(As Amended November 28, 2016)

It is ORDERED that the Conditions of Probation and Supervised Release applicable to each defendant committed to probation or supervised release in any division of the Western District of Texas, are adopted as follows:

Mandatory Conditions:

- [1] The defendant shall not commit another federal, state, or local crime during the term of supervision.
- [2] The defendant shall not unlawfully possess a controlled substance.
- [3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- [4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- [5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et. seq.) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- [6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- [7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- [8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- [9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- [1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- [2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- [3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- [4] The defendant shall answer truthfully the questions asked by the probation officer.

DEFENDANT: IDANIA RENTERIA-MADRID
CASE NUMBER: 7:21-CR-00088(1) DC

- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.
- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- [11] The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- [12] If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: IDANIA RENTERIA-MADRID
 CASE NUMBER: 7:21-CR-00088(1) DC

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 200 E. Wall St. Room 222, Midland, TX 79701 or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through pay.gov (link accessible on the landing page of the U.S. District Court's Website). **Your mail-in or online payment must include your case number in the exact format of DTXW721CR000088-001 to ensure proper application to your criminal monetary penalty.**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTAL:	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of **\$100.00**.

Fine

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** 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.