

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JUAN SAMUEL RODRIGUEZ-HUITRON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

/s/ Kevin Joel Page

JASON HAWKINS
Federal Public Defender
Northern District of Texas
TX State Bar No. 00759763
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886 Fax

KEVIN J. PAGE **
Assistant Federal Public Defender
Northern District of Texas
TX State Bar No. 24042691
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886

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Appendix A Opinion of Fifth Circuit, CA No. 21-10082, dated May 9, 2022, *United States v. Rodriguez-Huitron*, 2022 WL 1449182 (5th Cir. May 9, 2022) (unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered January 21, 2021. *United States v. Rodriguez-Huitron*, Dist. Court 1:20-CR-00041-H-BU-1.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 21-10082

United States Court of Appeals
Fifth Circuit

FILED

May 9, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JUAN SAMUEL RODRIGUEZ-HUITRON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:20-CR-41-1

Before WILLETT, ENGELHARDT, and WILSON, *Circuit Judges.*

PER CURIAM:*

Juan Samuel Rodriguez-Huitron pleaded guilty to illegal reentry after removal in violation of 8 U.S.C. § 1326. On appeal, Rodriguez-Huitron argues he was erroneously convicted and sentenced under § 1326(b)(2)—rather than § 1326(b)(1), which imposes a lower cap on imprisonment—because his aggravated assault conviction was not an “aggravated felony.”

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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The standard of review is well settled. Rodriguez-Huitron forfeited this issue and must thus “demonstrate (1) an error, (2) that is clear or obvious, and (3) that affects his substantial rights.” *United States v. Rojas-Luna*, 522 F.3d 502, 504 (5th Cir. 2008) (addressing plain error); *see also United States v. Gonzalez-Terrazas*, 529 F.3d 293, 298 (5th Cir. 2008) (noting an error may be plain based on decisions that post-date sentencing). Only once these conditions are met may we then “exercise discretion to correct the error, . . . if (4) th[at] error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Rojas-Luna*, 522 F.3d at 504 (internal quotation marks and citation omitted).

This analysis need not detain us long. A conviction for aggravated assault in Texas no longer qualifies as an “aggravated felony” under 8 U.S.C. § 1326(b)(2),¹ *Gomez Gomez*, 23 F.4th at 577, and our plain-error analysis requires only “that an error be ‘plain’ at the time of appellate consideration,” *Henderson v. United States*, 568 U.S. 266, 279 (2013) (quoting *Johnson v. United States*, 520 U.S. 461, 468 (1997)). There is no question the district court obviously erred.

Yet no remand is warranted. By his own admission, Rodriguez-Huitron seeks a limited remand *to determine* whether additional relief (*i.e.*, vacatur) is appropriate. But the tail cannot wag the dog. *See, e.g., United States v. Trujillo*, 4 F.4th 287, 291 (5th Cir. 2021) (declining remand to explore the possibility of prejudice). The standard of review requires that Rodriguez-Huitron justify the requested relief. He fails.

¹ Though Rodriguez-Huitron originally conceded our precedent foreclosed this argument, the legal landscape has since changed. *See United States v. Gomez Gomez*, 23 F.4th 575, 577 (5th Cir. 2022), *rev’d* 917 F.3d 332, 333 (5th Cir. 2019), *cert. granted, judgment vacated sub nom. Gomez v. United States*, 141 S. Ct. 2779 (2021). *See generally Borden v. United States*, 141 S. Ct. 1817, 1821–25 (2021).

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Three points reveal the aggravated-felony classification does not affect Rodriguez-Huitron's substantial rights. First, this flawed heading played no role in calculating Rodriguez-Huitron's Guidelines range.² Second, the adjudged sentence was *below* the cap set by § 1326(b)(1)—the correct statutory provision. *See, e.g., Gomez Gomez*, 23 F.4th at 578 n.4 (same situation). Third, Rodriguez-Huitron does not claim that any adverse immigration consequences flow from his status as an aggravated felon under § 1326(b)(2).³ *Cf., e.g., Trujillo*, 4 F.4th at 291 (highlighting collateral immigration consequences where conviction and sentence under § 1326(b)(2) was the only "aggravated felony").

Even were we to assume prejudice, Rodriguez-Huitron also fails to prove the error seriously affects the fairness, integrity, or public reputation of his proceedings. This is outcome dispositive. *See, e.g., United States v. Mondragon-Santiago*, 564 F.3d 357, 369 (5th Cir. 2009); *see also, e.g., United States v. Ramos-Bonilla*, 558 F. App'x 440, 442 (5th Cir. 2014) (per curiam).

We nonetheless exercise our discretion and REFORM the district court's judgment to reflect a conviction and sentence under § 1326(b)(1), *see, e.g., United States v. Hermoso*, 484 F. App'x 970, 973 (5th Cir. 2012) (per curiam) (applying 28 U.S.C. § 2106), and AFFIRM the modified judgment.

² Any points attributable to the aggravated assault conviction resulted from the term of imprisonment, not whether that conviction constituted an "aggravated felony." *See generally* U.S.S.G. §§ 2L1.2(b)(2)(B) (eight-point supplement for pre-deportation conduct that resulted in a qualifying sentence), 4A1.1 (three-point supplement for qualifying sentences). Furthermore, even if this were not the case, the district court disclaimed reliance on the Guidelines. *Cf., e.g., Molina-Martinez v. United States*, 578 U.S. 189, 200 (2016) (disclaiming prejudice on facts like this).

³ Nor could he claim as much. Rodriguez-Huitron was convicted of indecency with a child by sexual contact—another aggravated felony, *United States v. Najera-Najera*, 519 F.3d 509, 511-12 (5th Cir. 2008)—after his deportation. This alone makes him permanently ineligible for admission to the United States. *See* 8 U.S.C. § 1182(a)(9)(A).

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS ABILENE DIVISION

UNITED STATES OF AMERICA

v.

JUAN SAMUEL RODRIGUEZ-HUITRON

JUDGMENT IN A CRIMINAL CASE

§
§
§
§ Case Number: **1:20-CR-00041-H-BU(1)**
§ USM Number: **60323-177**
§ **David E. Sloan**
§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	1 of the indictment filed May 13, 2020.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
8 U.S.C. §§ 1326(a), 1326(b)(2), and 6 U.S.C. §§ 202(3), 202(4) and 557 - Illegal Re-Entry After Deportation	11/14/2018	1

The defendant is sentenced as provided in pages 2 through 7 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)
 Count(s) is Remaining count(s) are dismissed on the motion of the United States

It is ordered that the defendant must 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 must notify the court and United States attorney of material changes in economic circumstances.

January 21, 2021

Date of Imposition of Judgment

Signature of Judge

James Wesley Hendrix
United States District Judge

Name and Title of Judge

January 21, 2021

Date

DEFENDANT: JUAN SAMUEL RODRIGUEZ-HUITRON
CASE NUMBER: 1:20-CR-00041-H-BU(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
57 months as to count 1.

The court makes the following recommendations to the Bureau of Prisons: Incarceration at FCI Seagoville, Texas.

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 a.m. p.m. 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 2 p.m. on
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JUAN SAMUEL RODRIGUEZ-HUITRON
CASE NUMBER: 1:20-CR-00041-H-BU(1)

SUPERVISED RELEASE

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

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: JUAN SAMUEL RODRIGUEZ-HUITRON
CASE NUMBER: 1:20-CR-00041-H-BU(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must 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. You must 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 you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JUAN SAMUEL RODRIGUEZ-HUITRON
CASE NUMBER: 1:20-CR-00041-H-BU(1)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall have no unsupervised contact with persons under the age of 18, nor shall the defendant loiter near places where children may frequently congregate. The defendant shall neither seek nor maintain employment or volunteer work at any location and/or activity where persons under the age of 18 congregate and the defendant shall not date or befriend anyone who has children under the age of 18, without prior permission of the probation officer.
2. The defendant shall not illegally re-enter the United States, if deported, removed, or allowed voluntary departure.

DEFENDANT: JUAN SAMUEL RODRIGUEZ-HUITRON
 CASE NUMBER: 1:20-CR-00041-H-BU(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

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

The determination of restitution is deferred until 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. 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 the schedule of payments page 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:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* 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.

DEFENDANT: JUAN SAMUEL RODRIGUEZ-HUITRON
 CASE NUMBER: 1:20-CR-00041-H-BU(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payments of \$ _____ 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 20 (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 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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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
 See above for 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) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.