

No. _____

In the
Supreme Court of the United States

Miguel Murillo-Ramos,

Petitioner,

v.

United States of America,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

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Appendix A

United States v. Miguel Murillo-Ramos,
No. 21-10068, Dkt. 38 (9th Cir. Oct. 14, 2022),
Order denying petition for rehearing

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 14 2022

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MIGUEL MURILLO-RAMOS, AKA
Giovanni Alberto Murillo, AKA Miguel
Antonio Murillo,

Defendant-Appellant.

No. 21-10068

D.C. No.

2:20-cr-00114-JCM-NJK-1

District of Nevada,
Las Vegas

ORDER

Before: GOULD and RAWLINSON, Circuit Judges, and ZIPPS,* District Judge.

The panel has unanimously voted to deny the petition for panel rehearing.

The full court has been advised of Plaintiff-Appellant's petition for rehearing en banc and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(f). The petitions for rehearing and rehearing en banc are **DENIED**.

* The Honorable Jennifer G. Zipps, United States District Judge for the District of Arizona, sitting by designation.

Appendix B

United States v. Miguel Murillo-Ramos,

No. 21-10068, Dkt. 34-1 (9th Cir. March 25, 2022),

Memorandum

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 25 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-10068

Plaintiff-Appellee,

D.C. No.

v.

2:20-cr-00114-JCM-NJK-1

MIGUEL MURILLO-RAMOS, AKA
Giovanni Alberto Murillo, AKA Miguel
Antonio Murillo,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted February 17, 2022
San Francisco, California

Before: GOULD and RAWLINSON, Circuit Judges, and ZIPPS,** District Judge.

Appellant, Miguel Murillo-Ramos, is a native and citizen of Mexico who came to the United States early in his infancy. On November 10, 2010, Appellant was convicted of Robbery and Battery with Use of Deadly Weapon and sentenced

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

** The Honorable Jennifer G. Zipps, United States District Judge for the District of Arizona, sitting by designation.

to a minimum of 26 months and a maximum of 120 months in custody. After completion of his sentence, Appellant was removed to Mexico on January 17, 2015.

On November 8, 2017, Appellant was arrested by Immigration and Customs Enforcement Agents in Las Vegas. On August 6, 2018, Appellant pled guilty to another felony Illegal Reentry charge. On November 5, 2018, a district court sentenced Appellant to eighteen months in prison, followed by three years of supervised release. On April 6, 2019, the defendant was once again removed from the United States to Mexico.

On June 3, 2020, Appellant was indicted for being a deported alien found in the United States in violation of 8 U.S.C. § 1326(a) and (b). Appellant pled guilty without a plea agreement. The district court sentenced Appellant to prison for 46 months followed by three years of supervised release with standard conditions. Appellant appeals his 46-month prison sentence and the imposition of three years of supervised release with standard conditions.

On appeal, we first consider whether the district court committed significant procedural error, then we consider the substantive reasonableness of the sentence. *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc); *Gall v. United States*, 552 U.S. 38, 51 (2007). When an appellant does not challenge an alleged procedural error below, this Court reviews for plain error. *United States v. Bonilla-Guizar*, 729 F.3d 1179, 1187 (9th Cir. 2013). Plain error review requires initially

three things to be determined, followed by a discretionary decision. “First, there must be an error that has not been intentionally relinquished or abandoned. Second, the error must be plain—that is to say, clear or obvious. Third, the error must have affected the defendant's substantial rights.” *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1904 (2018) (citation omitted). When those elements of plain error have been established, we then have discretion whether to recognize the plain error. *Id.*

First, Appellant argues that the district court “procedurally err[ed] by failing to explain its analysis of the mitigating arguments” because the district court did not specifically address each of Appellant’s mitigating arguments.

Any sentence imposed must not be greater than necessary to fulfill the sentencing purposes of 18 U.S.C. § 3553(a). When issuing a sentence, the district court, “at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence . . .” *Id.* § 3553(c). When a district court pronounces its sentence, it need not go into a detailed line-by-line review of mitigating arguments. *Carty*, 520 F.3d at 992–93. A district court must explain a sentence sufficiently to permit meaningful appellate review. *Id.* at 993. The district court must set “forth enough to satisfy the appellate court that [it] has considered the parties’ arguments and has a reasoned basis for exercising [its] own legal decisionmaking authority.” *Rita v. United States*, 551 U.S. 338, 356 (2007).

Appellant's contention that the district court did not consider his mitigating arguments fails. Review of the sentencing decision and the transcript of the hearing shows that the district court properly considered the sentencing factors after hearing arguments from both the government and the Appellant's attorney before issuing its sentencing decision. Especially important is the fact that Appellant reentered the United States illegally on at least two prior instances. Given the deference afforded to the district court's sentencing decisions, *United States v. Dewey*, 599 F.3d 1010, 1016 (9th Cir. 2010), Appellant's sentence is proper and will not be disturbed.

Next, Appellant argues that the district court's imposition of three years of supervised release was unreasonable. We disagree.

"The court, in imposing a sentence . . . may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment." 18 U.S.C. § 3583(a). However, "[t]he court ordinarily should not impose a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment." U.S.S.G. § 5D1.1(c). Application Note 5 explaining Section 5D1.1(c), states that a court "should . . . consider imposing a term of supervised release . . . if the court determines it would provide an added measure of deterrence and protection based on the facts and circumstances of a particular case."

U.S.S.G. § 5D1.1 cmt. n.5. “[A]dequate explanation in some cases may also be inferred from the PSR or the record as a whole.” *Carty*, 520 F.3d at 992.

In this case, the district court’s imposition of supervised release was proper as an added level of deterrence based on Appellant’s history of prior illegal reentries. With each arrest, Appellant represented to a court of law that he would not return to the United States after removal, yet Appellant continued to do so knowing that his reentry was unlawful. The district court’s imposition of supervised release was a proper exercise of discretion.

AFFIRMED.

Appendix C

United States v. Miguel Murillo-Ramos,
No. 2:20-cr-00114-JCM-NJK, ECF No. 31
(D. Nev. Feb. 17, 2022), Judgment

UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

MIGUEL ANTONIO MURILLO-RAMOS
a/k/a Giovanni Alberto Murillo
a/k/a Miguel Antonio Murillo

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:20-cr-00114-JCM-NJK

USM Number: 54471-048

Kathryn Newman, AFPD

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One 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.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326	Deported Alien Found in United States	5/8/2020	1
8 U.S.C. § 1326(b)			

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 ☐ 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.

2/12/2021

Date of Imposition of Judgment

Signature of Judge

JAMES C. MAHAN, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

February 17, 2021

Date

DEFENDANT: MIGUEL ANTONIO MURILLO-RAMOS a/k/a Giovanni Alberto Murillo a/k/a Miguel Antonio Murillo

CASE NUMBER: 2:20-cr-00114-JCM-NJK

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Forty-six (46) months.

☒ The court makes the following recommendations to the Bureau of Prisons:

FCI Lompoc, California.

☒ 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: MIGUEL ANTONIO MURILLO-RAMOS a/k/a Giovanni Alberto Murillo a/k/a Miguel Antonio Murillo

CASE NUMBER: 2:20-cr-00114-JCM-NJK

SUPERVISED RELEASE

Upon release from imprisonment, you will 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, not to exceed 104 tests annually.
 - ☐ 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 the location where 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 other conditions on the attached page.

DEFENDANT: MIGUEL ANTONIO MURILLO-RAMOS a/k/a Giovanni Alberto Murillo a/k/a Miguel Antonio Murillo
CASE NUMBER: 2:20-cr-00114-JCM-NJK

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 specific risks posed by your criminal record and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the specific risks posed by your criminal record.
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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: MIGUEL ANTONIO MURILLO-RAMOS a/k/a Giovanni Alberto Murillo a/k/a Miguel Antonio Murillo
CASE NUMBER: 2:20-cr-00114-JCM-NJK

SPECIAL CONDITIONS OF SUPERVISION

1. Deportation Compliance – If you are ordered deported from the United States, you must remain outside the United States, unless legally authorized to re-enter. If you re-enter the United States, you must report to the nearest probation office within 72 hours after you return.

Note: A written statement of the conditions of release will be provided by the probation office to defense counsel who will provide it to defendant.

DEFENDANT: MIGUEL ANTONIO MURILLO-RAMOS a/k/a Giovanni Alberto Murillo a/k/a Miguel Antonio Murillo
CASE NUMBER: 2:20-cr-00114-JCM-NJK

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 100.00	\$ N/A	\$ WAIVED	\$ N/A	\$ N/A

☐ 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.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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☐ 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:

* 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: MIGUEL ANTONIO MURILLO-RAMOS a/k/a Giovanni Alberto Murillo a/k/a Miguel Antonio Murillo
CASE NUMBER: 2:20-cr-00114-JCM-NJK

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 payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ 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 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 the period of 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

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- ☐ 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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.