

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN ARIEL GARCIA-ARCHAGA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 22-10615
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 14, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KEVIN ARIEL GARCIA-ARCHAGA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CR-241-1

Before STEWART, DUNCAN, and WILSON, *Circuit Judges*.

PER CURIAM:*

Kevin Ariel Garcia-Archaga appeals the sentence imposed on his guilty plea conviction of illegal reentry after removal from the United States in violation of 8 U.S.C. § 1326. Renewing an argument made before the district court, Garcia-Archaga challenges the application of the enhanced penalty range in § 1326(b) as unconstitutional because it permits a defendant to be sentenced above the statutory maximum of § 1326(a) based on the fact

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

of a prior conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. As he correctly concedes, this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). He raises the issue to preserve it for Supreme Court review. The Government has filed an unopposed motion for summary affirmance agreeing that the issue is foreclosed and, in the alternative, requesting an extension of time to file a brief.

Because summary affirmance is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's motion is GRANTED, and the district court's judgment is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:21-CR-241-Y(1)

M. Levi Thomas, assistant U.S. attorney

KEVIN ARIEL GARCIA-ARCHAGA

John J. Stickney, attorney for the defendant

On February 9, 2022, the defendant, Kevin Ariel Garcia-Archaga, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:


| <u>TITLE & SECTION</u> | <u>NATURE OF OFFENSE</u> | <u>OFFENSE CONCLUDED</u> | <u>COUNT</u> |
|-------------------------------|-----------------------------------|--------------------------|--------------|
| 8 U.S.C. § 1326(a) and (b)(2) | Illegal Reentry After Deportation | May 4, 2020 | 1 |

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

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

The defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed June 14, 2022.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed June 16, 2022.

IMPRISONMENT

The defendant, Kevin Ariel Garcia-Archaga, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of 42 months on count one of the one-count indictment. This sentence shall run consecutively to the undischarged term of imprisonment imposed in case no. 1641825D in the 213th Judicial District Court, Tarrant County, Texas.

The Court makes a non-binding recommendation to the BOP that defendant, if appropriately classified, be allowed to serve his term of imprisonment at FCI-McRae in McRae, Georgia.

The defendant is remanded to the custody of the United States marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count one of the one-count indictment.

Under 18 U.S.C. § 3583(d), as a condition of supervised release upon the completion of the sentence of imprisonment, the defendant shall be surrendered by the Federal Bureau of Prisons to a duly authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions recommended by the U.S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

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

cooperate in the collection of DNA as directed by the probation officer, as authorized by the Justice for All Act of 2004;

report in person to the probation office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry;

not illegally re-enter the United States, if deported, removed, or allowed voluntary departure;

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

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25.00 per month; and participate in outpatient-mental-health

treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician., with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25.00 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

RETURN

I have executed this judgment as follows:

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

United States marshal

BY _____
deputy marshal

APPENDIX C

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX

2021 SEP -8 PM 3:40

DEPUTY CLERK

mb

UNITED STATES OF AMERICA

v.

KEVIN ARIEL GARCIA-ARCHAGA (01)
a/k/a Jefferson Ariel Garcia

No.

4:21-cr-241-Y

INDICTMENT

The Grand Jury Charges:

Count One

Illegal Reentry After Deportation
(Violation of 8 U.S.C. § 1326(a) and (b)(2))

On or about May 4, 2020, in the Fort Worth Division of the Northern District of Texas, defendant **Kevin Ariel Garcia-Archaga**, also known as Jefferson Ariel Garcia, an alien, was found in the United States having previously been deported and removed from the United States on or about April 23, 2018, and the defendant had not received the consent of the Attorney General of the United States or the Secretary of the Department of Homeland Security, to reapply for admission to the United States.

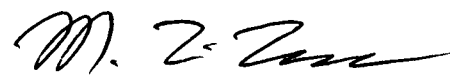
In violation of 8 U.S.C. § 1326(a) and (b)(2).

A TRUE BILL.



FOREPERSON

PRERAK SHAH
ACTING UNITED STATES ATTORNEY



LEVI THOMAS
Assistant United States Attorney
Texas State Bar No. 24083963
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102
Telephone: 817-252-5200
Facsimile: 817-252-5455

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

THE UNITED STATES OF AMERICA

v.

KEVIN ARIEL GARCIA-ARCHAGA (01)
a/k/a Jefferson Ariel Garcia

INDICTMENT

8 U.S.C. § 1326(a) and (b)(2)
Illegal Reentry After Deportation
Count 1


A true bill rendered

DALLAS


FOREPERSON

Filed in open court this 8th day of September, 2021.

Warrant to be Issued - In State Custody


UNITED STATES MAGISTRATE JUDGE
No Criminal Matter Pending

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,

V.

KEVIN ARIEL GARCIA-ARCHAGA,

§
§
§
§
§
§

No. 4:21-CR-00241-Y-1

OBJECTIONS TO THE PRESENTENCE INVESTIGATION REPORT

TO THE HONORABLE TERRY R. MEANS UNITED STATES DISTRICT JUDGE:

COMES NOW, Kevin Ariel Garcia-Archaga, defendant, by and through his counsel, John J. Stickney, hereby submits these written objections to the presentence investigation report (“PSR”) dated April 6, 2022, as prepared by U.S. Probation Officer, Samuel Egleston.

OBJECTION NO. 1:

Mr. Garcia-Archaga was indicted for illegal reentry into the United States, an offense punishable by a maximum of two years of imprisonment and one year’s supervised release under 8 U.S.C. § 1326(a). Section 1326(b) increases the maximum punishment if the alien was removed after having been convicted of certain categories of offenses. Mr. Garcia-Archaga’s indictment did not allege that he had such a prior conviction. Mr. Garcia-Archaga contends that, because the indictment did not allege a prior conviction, it charged only an offense under § 1326(a).

Mr. Garcia-Archaga concedes this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235, 239 (1998). But its narrow exception for previous convictions is severely undermined by the very opinions of Supreme Court justices who created it:

Almendarez-Torres, like *Taylor*, has been eroded by this Court's subsequent Sixth

Amendment jurisprudence, and a majority of the Court now recognizes that *Almendarez-Torres* was wrongly decided. See 523 U.S., at 248-249, 118 S.Ct. 1219 *28 SCALIA, J., joined by STEVENS, SOUTER, and GINSBURG, JJ., dissenting); *Apprendi*, supra, at 520-521, 120 S.Ct. 2348 (THOMAS, J., concurring). The parties do not request it here, but in an appropriate case, this Court should consider *Almendarez-Torres*' continuing viability. Innumerable criminal defendants have been unconstitutionally sentenced under the flawed rule of *Almendarez-Torres*, despite the fundamental "imperative that the Court maintain absolute fidelity to the protections of the individual afforded by the notice, trial by jury, and beyond-a-reasonable-doubt requirements." *Harris v. United States*, 536 U.S. 545, 581-582, 122 S.Ct. 2406, 153 L.Ed.2d 524 (2002) (THOMAS, J., dissenting).

Shepard v. United States, 544 U.S. 13, (2005) (Thomas, J., concurring). The shifting composition of the Supreme Court, and the justices' repeated expressions of doubt about the continuing vitality of that case provide reason to believe they may ultimately have a right indictment as to the fact of his prior conviction. The Court has thus far declined to revisit the issue by the narrowest of margins in recent opinions. See *Alleyne v. United States*, 133 S.Ct. 2151, 2160 n.1 (2013) ("In *Almendarez-Torres v. United States*...we recognized a narrow exception to this general rule for the fact of a prior conviction. Because the parties do not contest that decision's vitality, we do not revisit it for purposes of our decision today."); *Descamps v. United States*, 133 S. Ct. 2276, 2294–2295 (2013) (Thomas, J., concurring) (reluctantly noting that the Supreme Court has not "yet" overruled *Almendarez-Torres*); *Jones v. United States*, 125 S. Ct. 8, at n.* (2014) (Mem.) (Scalia, J., dissenting from denial of certiorari); *Apprendi v. New Jersey*, 530 U.S. 466 (2000) ("[I]t is arguable that *Almendarez-Torres* was incorrectly decided . . .").

If *Apprendi*, its progeny, and, most recently, *Alleyne*, undermine *Almendarez-Torres*, as Mr. Garcia-Archaga argues, his sentence exceeds the statutory maximum. The indictment alleged only the elements of the § 1326(a) offense; it did not allege a prior conviction. Nor did Mr. Garcia-Archaga admit to any prior conviction in his Factual Resume. Because Mr. Garcia-

Archaga was charged only with the § 1326(a) offense, he preserves for possible Supreme Court review the argument that his maximum punishment was limited to two years' imprisonment and one year of supervised release.¹

CLARIFICATION NO. 1 (regarding paragraph 42):

There is a typo in paragraph 42. The AFD present was AFD Stickney.

CLARIFICATION NO. 2 (regarding paragraphs 44-45):

For clarification, Mr. Garcia-Archaga believes he was in his early teens when he entered the United States. He doesn't remember exactly how old he was, though.

CONCLUSION

WHEREFORE, counsel for Mr. Garcia-Archaga respectfully submits these written objections and clarifications to the PSR.

¹ Mr. Garcia-Archaga recognizes that the Fifth Circuit has expressed the opinion, in dictum, that the issue he raises “no longer serves as a legitimate basis for appeal[.]” and that it would view appeals raising this issue “with skepticism.” *United States v. Pineda-Arrellano*, 492 F.3d 624, 625–26 (5th Cir. 2007); *see also id.* at 626–27 (Dennis, J., concurring) (characterizing majority’s statement on this issue as “dictum”). *Alleyne*’s broad reasoning and discussion of the precedential strength of *Apprendi* suggests that the Court may revisit *Almendarez-Torres v. United States*, 523 U.S. 224, 235, 239 (1998). For this reason, counsel raises the issue to fulfill his obligation of zealous representation, and to preserve the issue for further review.

Respectfully submitted,

JASON HAWKINS
Federal Public Defender
Northern District of Texas

/s/ John J. Stickney
JOHN J. STICKNEY
Assistant Federal Public Defender
MA Bar No. 687134
819 Taylor Street, Room 9A10
Fort Worth, Texas 76102
817.978.2753
John_J_Stickney@fd.org

Certificate of Service

This is to certify that a true and correct copy of the above and foregoing Defendant's Written Objections to Presentence Investigation Report have been served upon the Assistant U.S. Attorney and U.S Probation Officer on this 27th day of April, 2022.

/s/ John J. Stickney
John J. Stickney
Assistant Federal Public Defender

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA)
)
)
vs.)
)
KEVIN ARIEL GARCIA-ARCHAGA)
)

CASE NO. 4:21-CR-00241-Y
FORT WORTH, TEXAS
JUNE 14, 2022
10:25 A.M.

VOLUME 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE TERRY R. MEANS
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S :

FOR THE GOVERNMENT: MICHAEL LEVI THOMAS
 UNITED STATES DEPARTMENT OF JUSTICE
 NORTHERN DISTRICT OF TEXAS
 801 Cherry Street, Suite 1700
 Fort Worth, Texas 76102-6882
 Telephone: 817.252.5200

FOR THE DEFENDANT: JOHN J. STICKNEY
 ASSISTANT FEDERAL PUBLIC DEFENDER
 NORTHERN DISTRICT OF TEXAS
 819 Taylor Street, Room 9A10
 Fort Worth, Texas 76102
 Telephone: 817.978.2753

THE INTERPRETER: YOVANA GONZALEZ

COURT REPORTER: MONICA WILLENBURG GUZMAN, CSR, RPR
 501 W. 10th Street, Room 310
 Fort Worth, Texas 76102
 Telephone: 817.850.6681
 E-Mail: mguzman.csr@yahoo.com

Proceedings reported by mechanical stenography, transcript
produced by computer.

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P R O C E E D I N G S

(June 14, 2022, 10:25 a.m.)

THE COURT: Next before the Court is the sentencing of Kevin Ariel Garcia-Archaga, in Case Number 4:21-CR-241-Y.

Are the parties ready to proceed?

MR. THOMAS: Levi Thomas on behalf of the United States and I'm ready.

MR. STICKNEY: And John Stickney on behalf of Mr. Garcia-Archaga. We're ready, Your Honor.

THE COURT: Thank you, sir.

Let the record reflect that Mr. Garcia is being assisted by Yovana Gonzalez, a court-certified interpreter who has previously been sworn.

Mr. Garcia, please acknowledge your presence in court for the record by stating your full name.

THE DEFENDANT: Kevin Ariel Garcia-Archaga.

THE COURT: Mr. Garcia, you appeared before Magistrate Judge Hal R. Ray, Jr. on February 9, 2022, at which time you entered a plea of guilty to Count 1 of the indictment charging you with illegal reentry after deportation, in violation of 8 United States Code, Section 1326(a) and (b)(2).

On that date Judge Ray found that your plea of guilty was a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. You told him, at that time, that you

1 understood the elements of the offense, agreed to the accuracy
2 of the factual resume and admitted that you committed all
3 essential elements of the offense.

4 Accordingly, on February 28, 2022, I entered an
5 order accepting your plea and adjudging you guilty of the
6 indictment -- of the crime alleged in the indictment against
7 you.

8 Mr. Stickney, did you and your client receive in a
9 timely manner a copy of the presentence report and the
10 addendum to the report?

11 *MR. STICKNEY:* Yes, Your Honor.

12 *THE COURT:* And did you have an opportunity to
13 review those carefully with Mr. Garcia?

14 *MR. STICKNEY:* Yes, Your Honor.

15 *THE COURT:* Did the Government receive those timely?

16 *MR. THOMAS:* Yes, Your Honor.

17 *THE COURT:* Then I'll now notify the parties of my
18 tentative findings as to the defendant's objection and
19 clarifications to the presentence report.

20 The defendant's sole objection is overruled, for the
21 reasons set out in the Government's response and the probation
22 officer's addendum. Both of the defendant's clarifications
23 have been accepted by the probation officer in his addendum.

24 Does the Government have any objection or evidence
25 relating to those tentative findings?

1 *MR. THOMAS:* No, Your Honor.

2 *THE COURT:* Does the defendant?

3 *MR. STICKNEY:* No. No other objections, Your Honor.

4 *THE COURT:* Then I adopt as my final findings of
5 fact the statements of fact made in the presentence report
6 subject to and including changes and qualifications made by
7 the addendum.

8 There being no objections to the probation officer's
9 conclusions set forth in the report as to the appropriate
10 guideline calculations, I adopt those conclusions and
11 determine that the appropriate guideline calculations are:
12 Total offense level of 17, criminal history category of IV,
13 imprisonment range 37 to 46 months, supervised release range
14 one to three years and a fine range of 10,000 to \$95,000, plus
15 the costs of imprisonment and supervision.

16 Before I pronounce the sentence, Mr. Stickney, do
17 you wish to make any remarks on behalf of Mr. Garcia?

18 *MR. STICKNEY:* Yes, Your Honor.

19 *THE COURT:* Go ahead, sir.

20 *MR. STICKNEY:* Your Honor, we're asking for a
21 lenient sentence below the advisory guideline range,
22 concurrent if he still does have sentence remaining on his
23 state sentence or we're asking for the sentence to be
24 adjusted -- adjusted for that time that he's been in state
25 custody.

1 Mr. Garcia is facing deportation to Honduras. And
2 so we also ask that the Court find that mitigating, any
3 potential time that he might spend in immigration or ICE
4 custody.

5 This is Mr. Garcia's second illegal reentry. He
6 received a 13-month sentence for his first illegal reentry
7 case in 2017, and he's now facing, roughly, three times that
8 in this case. A sentence below the advisory guideline range
9 will still be reasonable and would capture the nature and the
10 circumstances and the seriousness of the offense.

11 We've talked a lot about what life looks like in
12 Honduras for Mr. Garcia. As noted in the PSR, Mr. Garcia was
13 subject -- subjected to unspeakable violence in his home
14 country when he was a child. He feared for his own life, as
15 he and his friends were, essentially, forced to join these
16 gangs. And if they refused, then they were tortured or
17 assassinated. He witnessed many people being killed in his
18 neighborhood. So, he fled Honduras as a teenager and came to
19 the United States.

20 Initially he tried to attend school in Tennessee.
21 He started to get very anxious and scared that the teachers
22 would report him and they would send him back to his home
23 country, where he would, again, be subjected to this violence.

24 So, we talked about what that means for him, for him
25 going forward especially. He clearly does not want to go back

1 to Honduras, for obvious reasons. But we've talked about the
2 fact that he cannot come back to the United States, commit a
3 crime to get into the United States and hope that he just
4 doesn't get found.

5 And so he does have hopes that he can work with an
6 immigration attorney and find some way where he can fight his
7 deportation. We've talked about the possibility, if that does
8 not work -- which he understands that's going to be a very
9 difficult task to try to stay in this country after he has
10 received criminal history convictions.

11 But if he is deported, we've talked about what that
12 means. And he will try to go to a neighboring country where
13 it is safer, albeit still dangerous and albeit still not the
14 same, as far as a living wage that he can get in the United
15 States. However, he cannot continue to come back to the
16 United States and face jail time, because that's not a life
17 that he wants for himself either.

18 So, when he is finished with his sentence, he does
19 plan to try to fight for immigration status. If that does not
20 work, then he will try to find work in Mexico or a neighboring
21 country, if he cannot live in Honduras. It's simply just not
22 a safe country for him.

23 We have also talked about continuing his education.
24 So, he is interested in participating in programs that are
25 offered in the BOP for education courses, but also for general

1 trade programs as well. He needs to build these skill sets,
2 so that if he is deported, or even if he remains in the United
3 States with permission, he has a skill set so that he can have
4 good, honest work.

5 He is a very hard worker, and he tells me that he's
6 willing to do anything. He's not picky about what he does, he
7 just wants to have a job so that he can have a living wage and
8 support himself and try to have a better life going forward.

9 So, for all of these reasons, Your Honor, we're
10 asking for a sentence below the advisory guideline range.
11 We're asking for credit for the time that he's been in, and
12 for consideration for the time that he's likely to spend in
13 immigration. Even if he's not granted permission, my guess is
14 that if he has a case pending in immigration, he's going to be
15 sitting in detention for a period of time if he doesn't get a
16 bond. So, for all of these reasons, we're asking for a
17 lenient sentence.

18 I would also request FCI McRae. That's where he was
19 this last time and it's in Tennessee (*sic*), or at least close
20 to Tennessee, where his family lives in.

21 *THE COURT:* How are you spelling that, McRae?

22 *MR. STICKNEY:* I spelled it -- and I'm not saying
23 that this is correct -- M-C-R-A-E, McRae.

24 *THE COURT:* Okay.

25 *MR. STICKNEY:* I think I looked it up when I

1 initially wrote it, but I can't be sure.

2 *THE COURT:* M-C-R-A-E.

3 *MR. STICKNEY:* M-C-R-A-E.

4 *THE COURT:* Okay. We'll check it out.

5 *MR. STICKNEY:* Thank you, Your Honor.

6 *THE COURT:* Mr. Garcia, do you wish to speak on your
7 own behalf or present any information in mitigation of your
8 sentence?

9 *THE DEFENDANT:* Yes, Your Honor.

10 *THE COURT:* Go ahead.

11 *THE DEFENDANT:* I would just like to apologize to
12 you, because in reality I do understand, yes, and I was
13 deported to Honduras.

14 I felt like I didn't have any option at that time
15 but to return from there to here, because over there the area
16 in which I live is an area that's just very, you know, it's
17 like every hour, every two hours somebody is being shot,
18 somebody is being killed. So they force you to join their
19 gangs and to act like them and be a gangster. And I don't
20 want to be a gangster, I don't want to be with them.

21 I do want a life that is not like that. I want a
22 better life. I want a life that does not go down that path.
23 But that's just what I wanted you to know. God bless you.

24 *THE COURT:* Thank you, sir.

25 Does the Government wish to be heard?

1 MR. THOMAS: No, thank you, Your Honor.

2 THE COURT: I'll now state the sentence determined
3 after consideration of all the factors set out in Title 18
4 United States Code, Section 3553(a), including especially the
5 advisory sentencing guidelines issued by the Sentencing
6 Commission and the conduct admitted by the defendant in his
7 factual resume.

8 The attorneys will have a final chance to make legal
9 objections before sentence is finally imposed.

10 It is the judgment of the Court that the defendant,
11 Kevin Ariel Garcia-Archaga, in Case Number 4:21-CR-241-Y, be
12 committed to the custody of the Federal Bureau of Prisons for
13 a period of 42 months. This sentence shall run consecutively
14 to the undischarged term of imprisonment imposed in Case
15 Number 1641825D in the 213th Judicial District Court in
16 Tarrant County, Texas.

17 I recommend that Mr. Garcia be incarcerated at FCI
18 McRae in Tennessee (*sic*). The Court does not order a fine or
19 costs of incarceration, because Mr. Garcia does not have the
20 financial resources or future earning capacity to pay a fine
21 or costs of incarceration. Restitution is not ordered because
22 there is no victim other than society at large.

23 Upon release from imprisonment, Mr. Garcia shall be
24 on supervised release for a term of three years. Under 18
25 United States Code, Section 3583(d), as a condition of

1 supervised release upon the completion of the sentence of
2 imprisonment, Mr. Garcia shall be surrendered by the Bureau of
3 Prisons to a duly authorized immigration official for
4 deportation in accordance with the established procedures
5 provided by the Immigration and Nationality Act. As a
6 condition of supervised release, if ordered deported,
7 Mr. Garcia shall remain outside of the United States.

8 In the event that Mr. Garcia is not deported
9 immediately upon release from imprisonment, or should he ever
10 be within the United States during any portion of the term of
11 supervised release, he shall, while on supervised release,
12 comply with the standard conditions recommended by the United
13 States Sentencing Commission at Section 5D1.3(c) of the United
14 States Sentencing Commission guidelines manual, and comply
15 with certain other conditions that have been set out in a
16 separate order, signed by me this day and offered to
17 Mr. Garcia for his review and signature.

18 And he has now returned that order to me with his
19 signature indicating his receipt of those additional or other
20 conditions, his understanding of them, his waiver of having
21 them read here in open court and his agreement to be bound by
22 them and subject to revocation for any violation of them.

23 In addition, he is ordered to pay a mandatory
24 special assessment of \$100.

25 A sentence of 42 months is sufficient, but not

1 greater than necessary, to comply with the purposes set forth
2 in paragraph 2 of Section 3553(a); that is, reflect the
3 seriousness of and provide just punishment for the offense,
4 promote respect for the law, afford adequate deterrence to
5 criminal conduct and protect the public from further crimes of
6 the defendant.

7 I have imposed a term of supervised release because
8 that will provide an added measure of deterrence and
9 protection based on the facts and circumstances of this case.

10 I have now stated the sentence and the reasons
11 therefor. I call upon the parties to indicate any legal
12 reason why sentence may not be imposed as stated.

13 *MR. THOMAS:* Nothing from the Government, Your
14 Honor.

15 *MR. STICKNEY:* No objections. For a clarification,
16 I misspoke, my client just corrected me. I guess FCI McRae is
17 in Atlanta, but it is the closest facility where his family
18 is, I guess.

19 *COURTROOM DEPUTY:* I was going to ask you that.

20 *MR. STICKNEY:* I apologize.

21 *THE COURT:* All right.

22 FCI Atlanta or McRae at Atlanta?

23 *MR. STICKNEY:* Exactly, the second one.

24 *THE COURT:* Sentence is imposed as stated.

25 Mr. Garcia, you have the right to appeal the

1 sentence that I have imposed. You also have the right to
2 apply for leave to appeal in forma pauperis if you're unable
3 to pay for the cost of an appeal.

4 Now, I have in front of me a Notice of Right to
5 Appeal Sentence that we furnished to you and you have returned
6 to the Court with your signature. Please understand that this
7 notice is the notice of the Court that you have the right to
8 appeal; it is not your notice to the Court that you are, in
9 fact, appealing.

10 And if you decide to appeal, you must do so within
11 14 days, in writing, filed with the Court. And Mr. Stickney
12 will assist you in that if you ask him to.

13 Do you have any questions, sir?

14 *THE DEFENDANT:* No, that's all.

15 *THE COURT:* Mr. Garcia, I'm not unsympathetic with
16 your plight. But our country cannot have unlimited
17 immigration -- illegal immigration, where people just show up
18 at the border and then come in, and especially if they commit
19 crimes when they're here. We have to have an ordered process
20 for that.

21 And the only option you've got is to figure out a
22 way to seek asylum or, if you return home, try to find people
23 that you can fight for your country. Because your country has
24 been overrun by people that are plundering it and people who
25 are basically forming an Army of their own. And I don't know

1 what else you could do but fight for your country once you get
2 there, if that's where you have to live. There's bound to be
3 allies there for you, I hope.

4 Do you have any questions, sir?

5 *THE DEFENDANT:* No, that's fine. That's fine.

6 *THE COURT:* Good luck to you.

7 You're remanded to the custody of the United States
8 Marshal.

9 *(Proceedings Adjourned)*

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REPORTER'S CERTIFICATE

I, Monica Willenburg Guzman, CSR, RPR, certify
that the foregoing is a true and correct transcript from
the record of proceedings in the foregoing entitled matter.

I further certify that the transcript fees format
comply with those prescribed by the Court and the Judicial
Conference of the United States.

Signed this 3rd day of August, 2022.

/s/Monica Willenburg Guzman
Monica Willenburg Guzman, CSR, RPR
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