

No. _____

In the Supreme Court of the United States

HUGO PEREZ-MUNOZ,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT,

PETITION APPENDIX

Opinion, <i>United States v. Perez-Mendoza</i> , No. 22-10423 (5th Cir. Jan. 17, 2023)	1a
Indictment, <i>United States v. Perez-Mendoza</i> , No. 4:21-cr-312 (N.D. Tex. filed Nov. 16, 2021)	3a
Factual Resume, <i>United States v. Perez-Mendoza</i> , No. 4:21-cr-312 (N.D. Tex. filed Dec. 28, 2021)	5a
Judgment of Conviction and Sentence, <i>United States v. Perez-Mendoza</i> , No. 4:21-cr-312 (N.D. Tex. filed April 27, 2022)	7a

United States Court of Appeals for the Fifth Circuit

No. 22-10423
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
January 17, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

HUGO PEREZ-MENDOZA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CR-312-1

Before DAVIS, SMITH, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Hugo Perez-Mendoza appeals his sentence for his guilty plea conviction of illegal reentry after removal in violation of 8 U.S.C. § 1326. Renewing an argument made before the district court, Perez-Mendoza 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 of a prior conviction that

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

No. 22-10423

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.

ORIGINAL

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

UNITED STATES OF AMERICA

v.

HUGO PEREZ-MENDOZA (01)

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
NOV 16 2021
CLERK, U.S. DISTRICT COURT
By MS Deputy

No. 4:21-cr-312-O

INDICTMENT

The Grand Jury Charges:

Count One

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

On or about December 19, 2020, in the Fort Worth Division of the Northern District of Texas, defendant **Hugo Perez-Mendoza**, an alien, was found in the United States having previously been deported and removed from the United States on or about May 8, 2020, 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)(1).

A TRUE BILL.

Natalie Wilson
FOREPERSON

CHAD E. MEACHAM
ACTING UNITED STATES ATTORNEY

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

UNITED STATES OF AMERICA

v.

HUGO PEREZ-MENDOZA (01)

No. 4:21-CR-312-O

FACTUAL RESUME

I. Plea:

Count One: Illegal Reentry after Deportation, in violation of 8 U.S.C. § 1326(a) & (b)(1).

II. Penalties:

The penalties the Court can impose include:

- a. a term of imprisonment of not more than ten (10) years;
- b. a fine of not more than \$250,000;
- c. a term of supervised release of not more than three (3) years. If the defendant violates the conditions of supervised release, he could be imprisoned for an additional term of imprisonment;
- d. a mandatory special assessment of \$100;
- e. costs of incarceration and supervision; and
- f. pleading guilty may have consequences with respect to the defendant's immigration status, including removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequences include his automatic removal from the United States.

III. Essential Elements of the Offense:

In order to establish the offense alleged in Count One, the government must prove the following elements beyond a reasonable doubt:

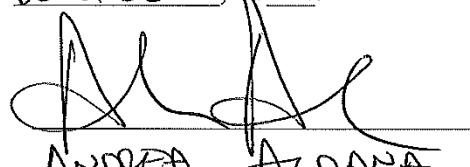
- First: That on or about the date alleged, the defendant was an alien;
- Second: That the defendant was previously removed from the United States;
- Third: That the defendant was found in the United States; and
- Fourth: That the defendant had not received the express consent of either the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission to the United States since the time of the defendant's previous removal.

IV. Stipulation of Facts:

Hugo Perez-Mendoza (Perez) is a citizen and national of Mexico, born in Celaya, Guanajuato, Mexico. On May 8, 2020, Perez was deported and removed to Mexico through Laredo, Texas. On December 19, 2020, Perez was encountered by immigration authorities at the Grapevine Police Department in Grapevine, Texas, within the Federal Northern District of Texas. Perez had re-entered the United States illegally, and he had not applied for nor received permission from the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission to the United States at any time after being deported.

SIGNED on this the 27 day of DECEMBER, 20 21.

Hugo Perez mendoza
HUGO PEREZ-MENDOZA
Defendant



ANDREA ACOANA
Attorney for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

HUGO PEREZ-MENDOZA

Case Number: 4:21-CR-312-Y(1)

M. Levi Thomas, assistant U.S. attorney

Andrea G. Aldana, attorney for the defendant

On December 29, 2021, the defendant, Hugo Perez-Mendoza, 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)(1)	Illegal Reentry After Deportation	December 19, 2020	1

The defendant is sentenced as provided in pages two through three 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 April 26, 2022.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed April 27, 2022.

22-10423.53

IMPRISONMENT

The defendant, Hugo Perez-Mendoza, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 57 months on count one of the one-count indictment. This sentence shall run consecutively to the sentence imposed in case no. 1667924D in Criminal District Court No. 2, Tarrant County, Texas.

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; and
- 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.

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.

22-10423.54

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