

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ARMANDO ORDONEZ-DOMINGUEZ,

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/ Jason D. Hawkins
JASON D. 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

INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit, CA No. 23-10486 consolidated with CA No. 23-10496, *United States v. Ordonez-Dominguez*, No. 23-10486, 2024 WL 35446 (5th Cir. Jan. 3, 2024)(unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered April 26, 2023.
United States v. Ordonez-Dominguez, Dist. Court 2:22-CR-129-Z.

Appendix C Judgment and Sentence of the United States District Court for the Northern District of Texas, entered April 26, 2023.
United States v. Ordonez-Dominguez, Dist. Court 2:22-CR-117-Z.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-10486
CONSOLIDATED WITH
No. 23-10496

United States Court of Appeals

Fifth Circuit

FILED

January 3, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ARMANDO ORDONEZ-DOMINGUEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 2:22-CR-129-1, 2:22-CR-117-1

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

PER CURIAM:*

Armando Ordonez-Dominguez was sentenced to 37 months of imprisonment and three years of supervised release following his guilty plea and conviction for illegal reentry after deportation in violation of 8 U.S.C. § 1326. He appeals his sentence and argues for the first time on appeal that § 1326(b) is unconstitutional because it permits a defendant to be

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

23-10486
c/w No. 23-10496

sentenced above the statutory maximum of § 1326(a) based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He does not appeal the revocation of his supervised release or his revocation sentence.

Ordonez-Dominguez correctly concedes that 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 moved, without opposition, for summary affirmance, or in the alternative, for an extension of time to file a brief on the merits.

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

APPENDIX B

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 26 2023
CLERK, U.S. DISTRICT COURT
By *AC* Deputy

United States District Court
Northern District of Texas
Amarillo Division

UNITED STATES OF AMERICA

v.

Case Number 2:22-CR-129-Z-BR-(1)

ARMANDO ORDONEZ DOMINGUEZ
Defendant.

USM Number 58766-509

JUDGMENT IN A CRIMINAL CASE
(For Revocation of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

The defendant, ARMANDO ORDONEZ DOMINGUEZ, was represented by Felipe Zavala.

THE DEFENDANT:

Pled true to violating Allegation 1 of the Petition for Person Under Supervision, signed March 30, 2022 and Allegations 1 and 2 of the Superseding Petition for Warrant to Revoke Supervised Release, signed November 16, 2022.

See Petitions for Offender Under Supervision.

Certified copy of the Judgment imposed on December 2, 2021 in the U.S. District Court for the District of Arizona, is attached.

As pronounced on April 25, 2023, the defendant is sentenced as provided on page 2 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: April 26, 2023.


MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **Twenty Four (24) months**.

The Court makes the following recommendations to the Bureau of Prisons:

1. that the Defendant be allowed to participate in any and all substance abuse treatment and rehabilitation programs, including the Residential Drug Abuse Program, while in the custody of the Federal Bureau of Prisons, if eligible, if consistent with security classification;
2. that the Defendant be allowed to pursue English courses and vocational training in auto mechanics, electrical and HVAC, if possible, if eligible, if consistent with security classification; and
3. that the Defendant be allowed to serve his term of incarceration at FCI La Tuna or FCI Big Spring, if possible, if eligible, if consistent with security classification.

Defendant is remanded to the custody of the US Marshal.

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America

v.

Armando Ordonez-Dominguez

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

No. CR-21-00746-001-PHX-SRB

Madeline Ann Mayer (FPD)
Attorney for Defendant

USM#: 58766-509

ICE# A205747243

THE DEFENDANT ENTERED A PLEA OF guilty on 9/15/2021 to the one Count Information.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 8, U.S.C. §1326(a), Reentry of Removed Alien, with sentencing enhancement pursuant to Title 8, U.S.C. §1326(b)(1), a Class C Felony offense, as charged in the one Count Information.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is committed to the custody of the Bureau of Prisons for a term of **SIX (6) MONTHS**, with credit for time served. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) YEARS**.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: REMITTED FINE: WAIVED RESTITUTION: N/A

The Court finds the defendant does not have the ability to pay a fine and orders the fine waived.

On motion of the Government, the special assessment is REMITTED.

SUPERVISED RELEASE

It is ordered that while on supervised release, the defendant must comply with the mandatory and standard conditions of supervision as adopted by this court, in General Order 17-18, which incorporates the requirements of USSG §§ 5B1.3 and 5D1.2. Of particular importance, the defendant must not commit another federal, state, or local crime during the term of supervision. Within 72 hours of sentencing or release from the custody of the Bureau of Prisons the defendant must report in person to the Probation Office in the district to which the defendant is released, if not deported. The defendant must comply with the following conditions:

Certified a true copy of an instrument
on file in my office on 4/24/2023
Clerk, U.S. District Court,
Northern District of Texas
By W. Blen Deputy

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USA vs. Armando Ordóñez-Domínguez

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MANDATORY CONDITIONS

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted.
- 3) You must refrain from any unlawful use of a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted. Unless suspended by the Court, 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.

STANDARD CONDITIONS

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of sentencing or 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

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USA vs. Armando Ordóñez-Domínguez

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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.

SPECIAL CONDITIONS

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

- 1) If deported, you must not re-enter the United States without legal authorization.

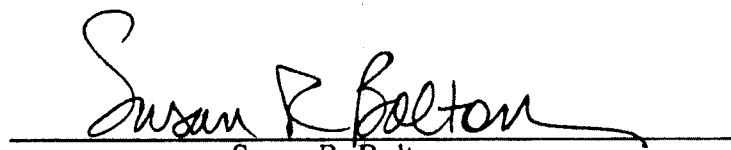
THE COURT FINDS that you have been sentenced in accordance with the terms of the plea agreement and that you have waived your right to appeal and to collaterally attack this matter.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

The Court orders commitment to the custody of the Bureau of Prisons.

Date of Imposition of Sentence: **Thursday, December 02, 2021**

Dated this 2nd day of December, 2021.



Susan R. Bolton
Susan R. Bolton
United States District Judge

RETURN

I have executed this Judgment as follows:

defendant delivered on _____ to _____ at _____, the institution

designated by the Bureau of Prisons with a certified copy of this judgment in a Criminal case

United States Marshal

By:

Deputy Marshal

CR-21-00746-001-PHX-SRB- Ordóñez-Domínguez 12/3/2021 - 3:22 PM

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Amarillo Division

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR 26 2023
CLERK, U.S. DISTRICT COURT
By *AC* Deputy

UNITED STATES OF AMERICA

v.

ARMANDO ORDONEZ-DOMINGUEZ

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:22-CR-117-Z-BR-(1)

U.S. Marshal's No.: 58766-509

Joshua Jerome Frausto, Assistant U.S. Attorney

Felipe Zavala, Attorney for the Defendant

On December 19, 2022 the defendant, ARMANDO ORDONEZ-DOMINGUEZ, entered a plea of guilty as to Count One of the Indictment filed on November 17, 2022. 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 Ended</u>	<u>Count</u>
8 U.S.C. §§ 1326(a) and (b)(1); and 6 U.S.C. §§ 202(3), 202(4), and 557	ILLEGAL RE-ENTRY AFTER DEPORTATION	11/01/2022	One

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on November 17, 2022.

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 25, 2023.


MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

Signed April 26, 2023.

Judgment in a Criminal Case

Defendant: ARMANDO ORDONEZ-DOMINGUEZ

Case Number: 2:22-CR-117-Z-BR-(1)

IMPRISONMENT

The defendant, ARMANDO ORDONEZ-DOMINGUEZ, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Thirty Seven (37) months as to Count One** of the Indictment filed on November 17, 2022. The sentence shall *run consecutively* to any sentence that may be imposed in Case # 2:22-CR-129-Z-BR-(1) pending in the U.S. District Court for the Northern District of Texas, Amarillo Division, and Case # 079996-E-CR pending in the 108th District Court of Potter County, Texas, for supervised release and probation revocations that are unrelated to the instant offense.

The Court makes the following recommendations to the Bureau of Prisons:

1. that the Defendant be allowed to participate in any and all substance abuse treatment and rehabilitation programs, including the Residential Drug Abuse Program, while in the custody of the Federal Bureau of Prisons, if eligible, if consistent with security classification;
2. that the Defendant be allowed to pursue English courses and vocational training in auto mechanics, electrical and HVAC, if possible, if eligible, if consistent with security classification; and
3. that the Defendant be allowed to serve his term of incarceration at FCI La Tuna or FCI Big Spring, if possible, if eligible, if consistent with security classification.

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 **Three (3) years** as to Count One of the Indictment filed on November 17, 2022.

While on supervised release, in compliance with the Standard Conditions of supervision adopted by the United States Sentencing Commission at Section 5D1.3(c), the defendant shall:

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.

Judgment in a Criminal Case

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Defendant: ARMANDO ORDONEZ-DOMINGUEZ

Case Number: 2:22-CR-117-Z-BR-(1)

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 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.
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 he or she observes 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 the job responsibilities), 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.
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.

Also, as set forth in the Notice of Intent to Impose Conditions of Supervised Release signed and dated April 25, 2023, the Defendant shall comply with the below-listed other conditions of supervised release, which are derived from Sections 5D1.3(a), (b), (d), and (e), in relevant part:

1. The defendant shall not commit another federal, state or local offense (*see* 18 U.S.C. § 3583(d)).
2. The defendant shall not unlawfully possess a controlled substance (*see* 18 U.S.C. § 3583(d)).

Judgment in a Criminal Case

Defendant: ARMANDO ORDONEZ-DOMINGUEZ

Case Number: 2:22-CR-117-Z-BR-(1)

3. The defendant who is convicted for a domestic violence crime as defined in 18 U.S.C. § 3561(b) for the first time shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant (see 18 U.S.C. § 3583(d)).
4. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant (see 18 U.S.C. § 3583(d)).
5. If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine (see 18 U.S.C. § 3624(e)).
6. The defendant shall (A) make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A, or any other statute authorizing a sentence of restitution; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (see 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule.
7. If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act (see 18 U.S.C. § 3583(d)).
8. The defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. § 40702).
9. The defendant shall not illegally reenter the United States if deported or allowed voluntary departure.
10. As a condition of supervised release, upon completion of his term of imprisonment, the defendant is to be surrendered to a duly authorized immigration official for deportation in accordance with the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As further condition of supervised release, if ordered deported, the defendant shall remain outside the United States unless legally authorized to reenter. In the event the defendant is not deported upon release from imprisonment or surrendered to a duly authorized immigration officer for deportation as described above, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall comply with the standard conditions recommended by the U.S. Sentencing Commission and shall comply with the mandatory and special conditions stated in the Judgment.
11. In the event the defendant is not deported upon release from imprisonment or surrendered to a duly authorized immigration official, the defendant must immediately report, continue to report, or surrender to U.S. Immigration and Customs Enforcement and follow all of their instructions and reporting requirements until any deportation proceedings are completed.

Judgment in a Criminal Case

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Defendant: ARMANDO ORDONEZ-DOMINGUEZ

Case Number: 2:22-CR-117-Z-BR-(1)

12. The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, 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, and contributing to the costs of services rendered (copayment) at the rate of at least \$20 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