

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

EDGAR ALONSO ESPARZA-RODRIGUEZ,

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

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Appendix A Opinion of Fifth Circuit, CA No. 23-10973, *United States v. Esparza-Rodriguez*, 2024 WL 2044628 (5th Cir. May 8, 2024)(unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered September 15, 2024. *United States v. Esparza-Rodriguez*, Dist. Court 4:23-CR-151-O.

Appendix C Indictment

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APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-10973
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 8, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDGAR ALONSO ESPARZA-RODRIGUEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CR-151-1

Before HIGGINSON, HO, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Edgar Alonso Esparza-Rodriguez pleaded guilty to illegal reentry and was sentenced to 24 months of imprisonment, a term 10 months above the top of the guidelines range. He appeals, arguing that this sentence is unreasonable. Although Esparza-Rodriguez suggests in passing that his challenge to the sentence implicates Federal Rule of Criminal Procedure 32,

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

No. 23-10973

he has abandoned this issue by failing to brief it. *See United States v. Scroggins*, 599 F.3d 433, 446-47 (5th Cir. 2010).

In reviewing a sentence for reasonableness, this court “must first ensure that the district court committed no significant procedural error” before turning to the issue of substantive reasonableness. *Gall v. United States*, 552 U.S. 38, 51 (2007). Esparza-Rodriguez suggests the district court should have explained whether it accepted that statements in his allocution and his counsel’s argument proved he was coerced into committing his offense. Because he failed to raise this issue in the district court, our review is for plain error. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009).

A sentencing judge “must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.” *Gall*, 552 U.S. at 51. Here, after adopting the presentence report and hearing argument for a guidelines sentence, the district court explained that in view of Esparza-Rodriguez’s criminal history and pattern of illegal reentry, it found an upward variance necessary to protect the public and deter future crime. The court’s reasoning is sufficiently clear on this record. More might have been said, but Esparza-Rodriguez does not show that more was required. His procedural challenge accordingly fails. *See id.*

Esparza-Rodriguez challenges the substantive reasonableness of his sentence on the grounds that the district court placed too much weight on his criminal history and not enough on mitigating factors, particularly his experience of coercion. We review this issue for abuse of discretion. *See United States v. Zarco-Beiza*, 24 F.4th 477, 481-82 (5th Cir. 2022). With respect to coercion, Esparza-Rodriguez fails to show that the district court was required to accept facts about the offense asserted for the first and only time in vague and unsworn statements. *See, e.g., United States v. Buenrostro*,

No. 23-10973

868 F.2d 135, 138 (5th Cir. 1989); *United States v. Alfaro*, 919 F.2d 962, 966 (5th Cir. 1990). His remaining arguments suggest only that the court should have weighed the sentencing factors differently, which is insufficient to justify reversal. *See Gall*, 552 U.S. at 51.

AFFIRMED.

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APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

EDGAR ALONSO ESPARZA-RODRIGUEZ

Case Number: 4:23-CR-00151-O(01)

U.S. Marshal's No.: 17647-579

Shawn Smith for Levi Thomas, Assistant U.S. Attorney

Andrea Guisela Aldana, Attorney for the Defendant

On June 1, 2023 the defendant, EDGAR ALONSO ESPARZA-RODRIGUEZ, entered a plea of guilty as to Count One of the Indictment filed on May 16, 2023. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

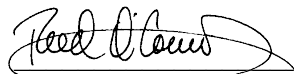
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326(a) and (b)(1)	Illegal Reentry After Deportation	10/30/2022	One

The defendant is sentenced as provided in pages 2 through 4 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 May 16, 2023.

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 September 15, 2023.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed September 15, 2023.

Judgment in a Criminal Case
Defendant: EDGAR ALONSO ESPARZA-
RODRIGUEZ
Case Number: 4:23-CR-00151-O(1)

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IMPRISONMENT

The defendant, EDGAR ALONSO ESPARZA-RODRIGUEZ, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **TWENTY-FOUR (24) MONTHS** as to Count One of the Indictment filed on May 16, 2023. This sentence shall run consecutively to any future sentence which may be imposed in Case No. 1754195 in the Criminal District Court No. 2 of 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 an FCI Facility in California or FCI Big Spring.

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 May 16, 2023.

As a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 USC § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, 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 contained in the Judgment and shall comply with the mandatory and special conditions stated herein.

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

Judgment in a Criminal Case
Defendant: EDGAR ALONSO ESPARZA-
RODRIGUEZ
Case Number: 4:23-CR-00151-O(1)

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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.

In addition the defendant shall:

not commit another federal, state, or local crime;

not illegally possess controlled substances;

cooperate in the collection of DNA as directed by the probation officer;

not possess a firearm, ammunition, destructive device, or any dangerous weapon;

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;

pay the assessment imposed in accordance with 18 U.S.C. § 3013;

Judgment in a Criminal Case
Defendant: EDGAR ALONSO ESPARZA-
RODRIGUEZ
Case Number: 4:23-CR-00151-O(1)

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take notice that if this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment;

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

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23-10973.52

APPENDIX C

CLERK U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FILED

ORIGINAL

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

2023 MAY 16 PM 2:11
DEPUTY CLERK MS

UNITED STATES OF AMERICA

v.

No.

EDGAR ALONSO ESPARZA-
RODRIGUEZ (01)

4:23-cr-151-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 October 30, 2022, in the Fort Worth Division of the Northern District of Texas, defendant **Edgar Alonso Esparza-Rodriguez**, an alien, was found in the United States having previously been deported and removed from the United States on or about August 29, 2022, 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.



FOREPERSON

LEIGHA SIMONTON
UNITED STATES ATTORNEY



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

THE UNITED STATES OF AMERICA

v.

EDGAR ALONSO ESPARZA-RODRIGUEZ (01)

INDICTMENT

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

A true bill rendered



DALLAS

FOREPERSON

Filed in open court this 10 day of May, 2023.

Defendant in Federal Custody since April 24, 2023



UNITED STATES MAGISTRATE JUDGE
Magistrate Court Number: 4:23-MJ-319-BJ

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APPENDIX D

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

UNITED STATES OF AMERICA

v.

EDGAR ALONSO ESPARZA-RODRIGUEZ

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§
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No. 4:23-CR-00151-O

DEFENDANT'S OBJECTIONS TO THE PSR

COMES NOW, Edgar Alonso Esparza-Rodriguez, by and through his attorney of record, and hereby submits these objections to the Presentence Investigation Report (PSR) dated July 12, 2023, as prepared by U.S. Probation Officer Kathryn Wren.

OBJECTION NO. 1: ¶ 52

Mr. Esparza-Rodriguez objects to the enhanced punishment range of 10 years in this case as cited by the PSR in paragraph 52. Mr. Esparza-Rodriguez believes that a maximum punishment range of 2 years is correct for the reasons stated in his Memorandum of Law supporting this objection.

OBJECTION NO. 2: ¶¶ 68-70

Mr. Esparza-Rodriguez objects to an upward departure or upward variance for the reasons suggested by the PSR. *See* PSR ¶¶ 68-70.

CLARIFICATION NO. 1: ¶ 46

Mr. Esparza-Rodriguez seeks to clarify what appears to be a typographical error in the PSR. The PSR says that he is “fluid” in the English and Spanish languages. This should likely say that he is “fluent” in the English and Spanish languages.

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23-10973.175

Respectfully submitted,

JASON HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Joshua Rhodes

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CERTIFICATE OF SERVICE

I, Joshua Rhodes, hereby certify that on July 21, 2023, I served a true and correct copy of this document upon Assistant United States Attorney Levi Thomas and USPO Kathryn Wren via ECF.

/s/ Joshua Rhodes

JOSHUA RHODES

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