

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MANUEL ESPINOZA-CAMACHO,

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

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Appendix A Opinion of Fifth Circuit, CA No. 23-11178, dated August 20, 2023,
United States v. Espinoza-Camacho, 2024 WL 3874382 (5th Cir. Aug. 20, 2024)(unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered November 20, 2023.
United States v. Espinoza-Camacho, Dist. Court 4:23-CR-133-P.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-11178
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
August 20, 2024

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

MANUEL ESPINOZA-CAMACHO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CR-133-1

Before KING, SOUTHWICK, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Manuel Espinoza-Camacho appeals his 24-month sentence of imprisonment imposed following his guilty plea to illegal reentry after deportation, which the district court ordered to run consecutively to his undischarged state sentence for murder. He challenges the consecutive nature of his sentence, arguing that the district court misapplied Section

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

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5G1.3(d) of the Sentencing Guidelines and the associated commentary. He also asserts that the consecutive sentence is substantively unreasonable.

By requesting a shorter and concurrent sentence, Espinoza-Camacho preserved his challenges to the consecutive sentence. *See Holguin-Hernandez v. United States*, 589 U.S. 169, 173–74 (5th Cir. 2020); *United States v. Reyes-Lugo*, 238 F.3d 305, 307–08 (5th Cir. 2001). In evaluating a procedural-reasonableness challenge, we review the district court’s interpretation or application of the Guidelines *de novo* and its factual findings for clear error. *United States v. Cedillo-Narvaez*, 761 F.3d 397, 401 (5th Cir. 2014). If there is no procedural error, we then review the substantive reasonableness of the district court’s sentencing decision for abuse of discretion. *Id.*

Guidelines Section 5G1.3(d) provides that, in a case like this one involving an undischarged term of imprisonment, “the sentence for the instant offense may be imposed to run concurrently, partially concurrently, or consecutively to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense.” § 5G1.3(d), p.s. The commentary to this guideline “instruct[s] the district court to consider a number of factors, including the 18 U.S.C. § 3553(a) factors, in making this decision.” *United States v. Lindsey*, 969 F.3d 136, 143 (5th Cir. 2020); § 5G1.3, comment (n.4(A)). The record shows that the district court was made aware of, and is thus presumed to have considered, these factors, including that Espinoza-Camacho’s undischarged state sentence consisted of 15 years of imprisonment, the majority of which he still had to serve. *See United States v. Izaguirre-Losoya*, 219 F.3d 437, 440 (5th Cir. 2000). Although the district court observed that this case was not related to the state case, the district court was not precluded from considering that factor when applying Section 5G1.3(d). *See* § 5G1.3, comment. (n.4(A)(v)).

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In sum, the record indicates that the district court’s application of Section 5G1.3(d) was consistent with the language of the guideline and its commentary. *See § 5G1.3(d), p.s.* Accordingly, Espinoza-Camacho’s procedural challenge fails.

As for Espinoza-Camacho’s challenge to the substantive reasonableness of the consecutive sentence, we measure such reasonableness against the factors listed in Section 3553(a). *See United States v. Ochoa*, 977 F.3d 354, 357 (5th Cir. 2020). Because Espinoza-Camacho’s sentence conformed to Section 5G1.3(d) and was within the guidelines range, the consecutive nature of his sentence is “presumptively reasonable and is accorded great deference.” *United States v. Candia*, 454 F.3d 468, 473 (5th Cir. 2006).

Espinoza-Camacho asserts that the goals of punishment, deterrence, and incapacitation under Section 3553(a) can be met by the remaining component of the undischarged sentence. After considering the applicable guideline and “all the factors” in Section 3553(a), however, the district court concluded that a consecutive sentence was warranted. In reaching that decision, the district court noted that the instant case was unrelated to the state case, therefore implying that the state sentence for murder would not provide just punishment for Espinoza-Camacho’s illegal reentry offense in this case or adequately deter further illegal reentry offenses. *See § 3553(a).* Under these circumstances, Espinoza-Camacho has not rebutted the presumption of reasonableness that is afforded his consecutive sentence. *See Candia*, 454 F.3d at 478.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

v.

MANUEL ESPINOZA-CAMACHO

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:23-CR-00133-P(01)

U.S. Marshal's No.: 35399-479

Levi Thomas, Assistant U.S. Attorney

Andrea Aldana, Attorney for the Defendant

On July 25, 2023 the defendant, MANUEL ESPINOZA-CAMACHO, entered a plea of guilty as to Count One of the Indictment filed on May 10, 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)	Illegal Reentry After Deportation	6/22/2020	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 May 10, 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 November 16, 2023.



MARK T. PITTMAN
U.S. DISTRICT JUDGE

Signed November 20, 2023.

Judgment in a Criminal Case
Defendant: MANUEL ESPINOZA-CAMACHO
Case Number: 4:23-CR-00133-P(1)

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IMPRISONMENT

The defendant, MANUEL ESPINOZA-CAMACHO, 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 10, 2023. This sentence shall run consecutively to the defendant's undischarged term of imprisonment in Case No. 1647845D in the 485th Judicial District Court, Tarrant County, Texas, as this case is unrelated to the instant offense.

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 **One (1) year** as to Count One of the Indictment filed on May 10, 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:

- 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;
- 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;

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Defendant: MANUEL ESPINOZA-CAMACHO
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- 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 observed 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 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 employment (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 an 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; and,
- 13) The defendant shall 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 possess illegal controlled substances;

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

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

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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; and,

not illegally reenter the United States if deported or allowed voluntary departure.

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.

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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