

No. _____

In the Supreme Court of the United States

ARMANDO MENA-RODRIGUEZ,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT,

PETITION APPENDIX

| | |
|---|----|
| Opinion, <i>United States v. Mena-Rodriguez</i> , No. 23-11223 (5th Cir. Sept. 30, 2024) | 1a |
| Indictment, <i>United States v. Mena-Rodriguez</i> , No. 4:23-cr-208 (N.D. Tex. filed July 13, 2023) | 3a |
| Factual Resume, <i>United States v. Mena-Rodriguez</i> , No. 4:23-cr-208 (N.D. Tex. filed Aug. 23, 2023) | 5a |
| Judgment of Conviction and Sentence, <i>United States v. Mena-Rodriguez</i> , No. 4:23-cr-208 (N.D. Tex. filed Nov. 30, 2023) | 7a |

United States Court of Appeals for the Fifth Circuit

No. 23-11223
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 30, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ARMANDO MENA-RODRIGUEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CR-208-1

Before WIENER, HO, and RAMIREZ, *Circuit Judges.*

PER CURIAM:*

Armando Mena-Rodriguez appeals the sentence imposed following his conviction for illegal reentry after deportation. Mena-Rodriguez argues that the district court's application of the recidivism enhancement in 8 U.S.C. § 1326(b) is unconstitutional. Nevertheless, he properly acknowledges that this argument is foreclosed by *Almendarez-Torres v. United*

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

No. 23-11223

States, 523 U.S. 224 (1998). *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). He raises the issue only to preserve it for further review.

Next, Mena-Rodriguez requests that we consider remanding the case to correct the presentence report's mistaken assertion that no charges had been filed against him following his March 2023 arrest for driving while intoxicated. He contends that, if the district court had known that the State was pursuing felony charges against him, the court might have ordered the federal sentence to run concurrently or partially concurrently with the anticipated state sentence. However, it is Mena-Rodriguez's burden on plain error review to demonstrate a reasonable probability of a different result on remand, and he has failed to do so. *See United States v. Trujillo*, 4 F.4th 287, 291 (5th Cir. 2021); *United States v. Ayelotan*, 917 F.3d 394, 400 (5th Cir. 2019).

AFFIRMED.

ORIGINAL

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

UNITED STATES OF AMERICA

v.

ARMANDO MENA-RODRIGUEZ (01)

No.

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUL 13 2023
CLERK, U.S. DISTRICT COURT
By _____ Deputy

4 - 23 CR- 208 - p
INDICTMENT

The Grand Jury Charges:

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

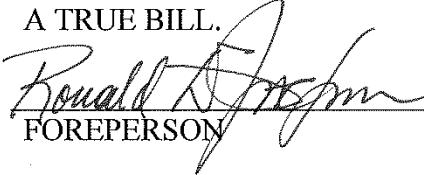
On or about March 19, 2023, in the Fort Worth Division of the Northern District of Texas, defendant, **Armando Mena-Rodriguez**, an alien, was found in the United States having previously been deported and removed from the United States on or about January 25, 2012, and the defendant had not received 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.

Indictment - Page 1 of 2

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In violation of 8 U.S.C. § 1326(a) and (b)(1).

A TRUE BILL.



Ronald J. Aspinwall
FOREPERSON

LEIGHA SIMONTON
UNITED STATES ATTORNEY



LEVI THOMAS
Assistant United States Attorney
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ORIGINAL

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

UNITED STATES OF AMERICA

v.

ARMANDO MENA-RODRIGUEZ (01)

| | |
|---|--------|
| U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS | |
| FILED | |
| AUG 23 2023 | |
| CLERK, U.S. DISTRICT COURT | |
| No. 4:23-CR-208-PBy | Deputy |

FACTUAL RESUME

I. Plea:

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

II. Maximum Penalties:

The maximum penalties the Court can impose include:

- a. a term of imprisonment of ten (10) years;
- b. a fine of \$250,000;
- c. a term of supervised release of three (3) years. If the defendant violates the conditions of supervised release, he could be imprisoned for an additional period of confinement;
- d. a mandatory special assessment of \$100; and
- e. 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:

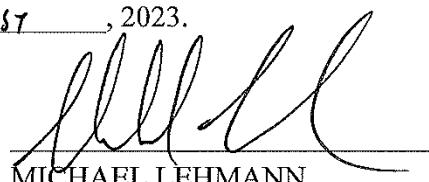
- First: That on or about the date alleged, the defendant was an alien;
- Second: That the defendant was previously removed from the United States;
- Third: That the defendant was found in the United States; and
- Fourth: That the defendant had not received the express consent of either the Attorney 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:

Armando Mena-Rodriguez (Mena) is a citizen and national of Mexico, born in San Luis Potosi, Mexico. On January 25, 2012, Mena was deported and removed to Mexico through Laredo, Texas. On March 19, 2023, Mena was encountered by immigration authorities at the Fort Worth Police Department in Fort Worth, Texas, within the Federal Northern District of Texas. Mena 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 14 day of August, 2023.


ARMANDO MENA-RODRIGUEZ
Defendant


MICHAEL LEHMANN
Attorney for Defendant

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ARMANDO MENA-RODRIGUEZ

Case Number: 4:23-CR-00208-P(01)

U.S. Marshal's No.: 72021-510

Levi Thomas, Assistant U.S. Attorney

Michael Lehmann, Attorney for the Defendant

On August 23, 2023 the defendant, ARMANDO MENA-RODRIGUEZ, entered a plea of guilty as to Count One of the Indictment filed on July 13, 2023. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

| Title & Section | Nature of Offense | Offense Ended | Count |
|-------------------------------|-----------------------------------|----------------------|--------------|
| 8 U.S.C. § 1326(a) and (b)(1) | Illegal Reentry After Deportation | 3/19/2023 | 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 July 13, 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 29, 2023.



MARK T. PITTMAN
U.S. DISTRICT JUDGE

Signed November 30, 2023.

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Judgment in a Criminal Case
Defendant: ARMANDO MENA-RODRIGUEZ
Case Number: 4:23-CR-00208-P(1)

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IMPRISONMENT

The defendant, ARMANDO MENA-RODRIGUEZ, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Fifteen (15) months** as to Count One of the Indictment filed on July 13, 2023.

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 July 13, 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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Judgment in a Criminal Case

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Defendant: ARMANDO MENA-RODRIGUEZ
Case Number: 4:23-CR-00208-P(1)

- 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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Judgment in a Criminal Case
Defendant: ARMANDO MENA-RODRIGUEZ
Case Number: 4:23-CR-00208-P(1)

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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;

not illegally reenter the United States if deported 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.

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Judgment in a Criminal Case
Defendant: ARMANDO MENA-RODRIGUEZ
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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

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