

No. \_\_\_\_\_

In the Supreme Court of the United States

---

RAQUEL DELGADO CHAVEZ,  
*PETITIONER*,

v.

UNITED STATES OF AMERICA,  
*RESPONDENT*,

---

APPENDIX TO PETITION FOR CERTIORARI

---

Appendix A: Fifth Circuit Opinion.....	1a
Appendix B: District Court Sentencing Transcript.....	4a
Appendix C: District Court Judgment.....	44a
Appendix D: Fifth Circuit Order Denying Rehearing .....	51a
Appendix E: Provisions Involved .....	52a
Appendix F: Excerpts of Sentencing Transcripts.....	58a

## APPENDIX A

Case: 23-11173 Document: 89-1 Page: 1 Date Filed: 10/17/2024

# United States Court of Appeals for the Fifth Circuit

---

No. 23-11173  
Summary Calendar

---

United States Court of Appeals  
Fifth Circuit  
**FILED**  
October 17, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

RAQUEL DELGADO CHAVEZ,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:23-CR-29-1

---

Before SMITH, STEWART, and DUNCAN, *Circuit Judges.*

PER CURIAM:\*

Raquel Delgado Chavez appeals the 192-month sentence imposed following her guilty plea conviction for transportation of an illegal alien resulting in death. She argues that the district court erred in applying the U.S.S.G. § 2L1.1(c)(1) cross-reference to the second degree murder

---

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

No. 23-11173

guideline at U.S.S.G. § 2A1.2 instead of the involuntary manslaughter guideline at U.S.S.G. § 2A1.4 and that the error was not harmless.

Delgado Chavez objected on this basis below. Accordingly, we review the district court's factual findings for clear error and its interpretation of the Sentencing Guidelines de novo. *See United States v. Lemus-Gonzalez*, 563 F.3d 88, 92 (5th Cir. 2009).

Extreme recklessness and wanton disregard for human life establishes second-degree murder, but recklessness and wanton disregard for human life, without the “extreme” modifier, is required for involuntary manslaughter. *Id.* Delgado Chavez argues that the district court did not make any factual findings to satisfy the elements of second-degree murder and her actions, while reckless, were not “extreme.” The record reveals that Delgado Chavez agreed to transport four undocumented aliens for financial profit in a vehicle that did not have the capacity for each passenger to have the proper safety restraints and subsequently got into a crash that resulted in the death of one of the passengers. After the accident, Delgado Chavez exited the vehicle and fled without offering aid or calling emergency services even though she admits that she observed the victim still alive, pinned under the vehicle, and actively attempting to extricate himself. The district court did not err in concluding that Delgado Chavez acted in the extreme when she neglected her duty to render aid to her passenger and callously left him to die to avoid any consequences. *See id.* at 90-93.

Moreover, even if the district court had erred in applying the second degree murder guideline, any error was harmless. We have determined that a guidelines calculation error is harmless when the district court considers the correct guidelines range and indicates that it would impose the same sentence if that range applied. *See United States v. Richardson*, 676 F.3d 491, 511-12 (5th Cir. 2012); *United States v. Duhon*, 541 F.3d 391, 396 (5th Cir.

No. 23-11173

2008). The district court made clear that it considered the guideline range using the cross-reference to the involuntary manslaughter guideline but noted that it believed a sentence in that range was too low, particularly in light of the need to impose a just punishment and provide adequate deterrence. Further, the district court explicitly maintained that it would have imposed the same sentence for the same reasons even if the involuntary manslaughter guideline had applied, and without regard to the calculated guideline range, given that the 18 U.S.S.C. § 3553(a) sentencing factors weighed heavily in favor of a longer sentence. *See Lemus-Gonzalez*, 563 F.3d at 93-94.

The judgment of the district court is AFFIRMED.

## APPENDIX B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

SENTENCING HEARING  
BEFORE THE HONORABLE JAMES WESLEY HENDRIX,  
UNITED STATES DISTRICT JUDGE

NOVEMBER 16, 2023  
LUBBOCK, TEXAS

## A P P E A R A N C E S

FOR THE GOVERNMENT:

UNITED STATES ATTORNEY'S OFFICE  
1205 TEXAS AVENUE, SUITE 700  
LUBBOCK, TEXAS 79401  
BY: RYAN REDD

BY: RYAN REDD

FOR THE DEFENDANT:

FEDERAL PUBLIC DEFENDER'S OFFICE  
1205 TEXAS AVENUE, SUITE 506  
LUBBOCK, TEXAS 79401  
BY: WADE IVERSON

BY: WADE IVERSON

FEDERAL OFFICIAL COURT REPORTER: MECHELLE DANIEL, 1205 TEXAS AVENUE, LUBBOCK, TEXAS 79401, (806) 744-7667.

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY; TRANSCRIPT  
PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

*Mechelle Daniel, Federal Official Court Reporter*  
(806) 744-7667 **23-11**

23-11173.85

1	<u>INDEX</u>	
2		
3	DEFENDANT'S OBJECTION TO PRESENTENCE REPORT.....	5
4	GOVERNMENT'S RESPONSE.....	11
5	DEFENDANT'S REBUTTAL RESPONSE.....	15
6	COURT'S RULING ON OBJECTION.....	16
7	DEFENDANT'S SENTENCING EVIDENCE/ARGUMENT.....	24
8	ALLOCUTION.....	30
9	GOVERNMENT'S SENTENCING EVIDENCE/ARGUMENT.....	31
10	SENTENCING FACTORS.....	33
11	SENTENCE BY THE COURT.....	36
12	RIGHT TO APPEAL.....	38
13	OBJECTION TO SENTENCE.....	38
14	REPORTER'S CERTIFICATE.....	40
15		
16		
17		
18		
19	* * * * *	
20		
21		
22		
23		
24		
25		

## 1 P R O C E E D I N G S

2 THE COURT: The Court calls the next case of the  
3 morning, United States vs. Raquel Delgado Chavez,  
4 5:23-CR-029-1.

5 Who is here on behalf of the defendant?

6 MR. IVERSON: Your Honor, Wade Iverson present and  
7 ready with Ms. Chavez.

8 THE COURT: Thank you, Mr. Iverson  
9 For the United States?

10 MR. REDD: Ryan Redd on behalf of the  
11 United States. Ready to proceed, Your Honor.

12 THE COURT: Thank you, Mr. Redd.

13 Ms. Chavez, good morning.

14 THE DEFENDANT: Good morning, sir.

15 THE COURT: Will you please tell me your full name.

16 THE DEFENDANT: Raquel Delgado Chavez.

17 THE COURT: Ms. Chavez, let's talk about your case  
18 for a second and how we got here today.

19 You previously appeared before Magistrate Judge  
20 Bryant back in late July. You pled guilty to Count 1 of the  
21 indictment charging you with transportation of an illegal alien  
22 resulting in death.

23 Judge Bryant found that your guilty plea was  
24 knowing and voluntary and supported by a sufficient factual  
25 basis, so he recommended that I accept your guilty plea. And I

1 did. On August 18th, I entered an order accepting your plea  
2 and adjudging you guilty of the crime alleged against you.

3 Now, Ms. Chavez, I know this is the first time you  
4 and I are seeing each other during this process, but I want you  
5 to know I'm very familiar with your case. The Court has  
6 reviewed and read all of these materials--and they are many--  
7 and I am ready to proceed today. Okay?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Mr. Iverson, have you had an  
10 opportunity to read the presentence report and its addendum and  
11 discuss those documents with your client?

12 MR. IVERSON: Yes, I have, Your Honor.

13 THE COURT: Ms. Chavez, have you had an opportunity  
14 to read your presentence report and its addendum and discuss  
15 those with your attorney?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You understand that we're here so I can  
18 decide what sentence to impose?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Ms. Chavez, let me tell you  
21 what's going to happen. Your attorney has raised an objection  
22 to the presentence report. I need to resolve that to figure  
23 out what the advisory guideline range is before we can go on.  
24 Both sides have filed a lot of documents about that. We might  
25 be talking about that for a second. So I'm going to ask that

1 you have a seat at counsel table; then I will call you back up  
2 and you can tell me whatever you'd like to tell me. Okay?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Have a seat.

5 And, Mr. Iverson, you can stay at the podium.

6 MR. IVERSON: Thank you, Your Honor.

7 THE COURT: All right. Mr. Iverson, let me set the  
8 stage. You have raised an objection to the base offense level,  
9 and the delta, the difference, is enormous. It's a 16-level  
10 difference between what you think should and shouldn't apply.

11 We've got a couple of students here today, so let  
12 me just set the stage. If you think anything--any of my  
13 place-setting is inaccurate, please correct me.

14 Background about the guidelines. Under 2L1.2--  
15 That's the guideline for violating the statute at issue here,  
16 transportation of an illegal alien resulting in death.  
17 Section 2L1.2(c) provides a cross-reference to the appropriate  
18 homicide guideline if a death resulted and the resulting  
19 offense is greater--the offense level is greater than that  
20 determined under the alien smuggling and transportation  
21 guideline.

22 Here, the presentence report recommended applying  
23 the cross-reference to the second-degree murder guideline,  
24 which is Section 2A1.2, on the basis that your client acted  
25 with malice by exhibiting extreme recklessness and wanton

1 disregard for human life when she transported more people in  
2 her vehicle than safely possible, and she also left the victim  
3 here, P.F., trapped under the truck to die.

4 With that cross-reference, if it were applied, her  
5 base offense level, as calculated by the probation officer and  
6 as recommended to me today, is 38.

7 Some background information from the presentence  
8 report. This offense involved a single-vehicle rollover crash.  
9 Ms. Chavez was driving a truck with six occupants. According  
10 to her statement to officers, when she attempted to pull over  
11 to let a vehicle pass, she lost control of the truck, and it  
12 flipped. One of the passengers, P.F., ended up ejected and  
13 pinned underneath the truck.

14 P.F. was still alive initially after the accident.  
15 Ms. Chavez stated that she saw his head moving and that he was  
16 trying to get himself out from under the truck. She claims  
17 that she attempted to get the truck off of him but was  
18 unsuccessful. She and other occupants then fled the scene to  
19 nearby fields. She says she was unable to call 9-1-1 because  
20 she lacked cell reception. The government disputes that.

21 P.F. was later found by officers deceased and still  
22 stuck under the truck. He had suffered blunt force injuries to  
23 the head, neck, torso, and extremities.

24 In your view, you think the cross-reference should  
25 apply but to involuntary manslaughter, not to second-degree

1 murder.

2 I have read all the briefing, of course, but I'd be  
3 glad to hear any additional argument today.

4 MR. IVERSON: Thank you, Your Honor.

5 Yes, everything you have summarized is correct from  
6 my point of view, Your Honor. The important factor here, Your  
7 Honor, is, the extreme recklessness required for the  
8 second-degree murder enhancement to apply, or that  
9 cross-reference to apply, in some way, in looking at the case  
10 law, has to contribute to the death.

11 In this case, as I cited in my motion, the fact  
12 that there are four people--again, not in the bed of the truck,  
13 but in the cab of the truck designed to hold three people--  
14 while reckless, doesn't rise to that level of extreme  
15 recklessness. I would even argue that's something that  
16 probably occurs on a regular basis.

17 The case cited by both Probation and confirmed by  
18 government is a completely different situation, where people  
19 were not permitted to be in seats; stacked on top of each  
20 other, seats folded down. On top of that, intoxicated,  
21 drinking a 12-pack of beer, fleeing from police. I mean, all  
22 those compounded upon each other to result in the deaths in  
23 that case.

24 In addition-- And so that focuses on, you know,  
25 there are four people in the back of this truck. We agree that

1 it is reckless and that's why involuntary manslaughter is the  
2 right thing here. It didn't--it's not so extreme that death  
3 was almost expected, like the other situations. And it  
4 certainly contributed, but on a reckless level. I think it's  
5 clear under the law. It even cites that somebody willingly  
6 driving intoxicated, if that results in a death, that should  
7 typically be reckless. And I think this conduct falls well  
8 below that of driving while voluntarily intoxicated that  
9 results in a death, Your Honor.

10 And as to the second piece, which the government  
11 seemed to focus on, leaving the scene--

12 THE COURT: Yeah, I think if we stopped there, I  
13 mean, I think if it were just a rollover--an inadvertent  
14 rollover crash and one too many in the back seat, I doubt the  
15 government or the probation officer would be advocating for the  
16 second-degree murder cross-reference. I'm sure it's the  
17 combination of that with the fact that she looked at someone  
18 pinned under a truck who was still alive, who was trying to get  
19 out, and she fled. And I know that's where you're about to  
20 go--

21 MR. IVERSON: Yes.

22 THE COURT: --and that is concerning to me, of  
23 course.

24 MR. IVERSON: Yes, Your Honor. And as I state in  
25 my motion and I'll reaffirm, in my discussions with Ms. Chavez,

1       feels guilt. This is something that she will carry for the  
2       rest of her life. And I know, in her allocution, you will be  
3       able to see the sincerity with what she--she carries that.

4               But going back to the scene that day, she described  
5       to the hospital having lost consciousness; once she gets out,  
6       feeling dazed, confused, which is consistent. I mean, you  
7       know, the speed limit there was 75 miles an hour. Again, she  
8       tried to pull over to let somebody pass, and the truck rolls  
9       over. So it's expected that she--you know, all of them might  
10      be dazed, confused, and some injuries.

11               Under that situation, again, not in her normal,  
12       clear-minded, thinking straight, but in a panic-- This is the  
13       first car accident she has been in. It's a severe one. She  
14       has got head injuries. Others are panicking. They were  
15       undocumented. They flee. Her husband is fleeing as well. And  
16       she succumbs under that moment to a split-second decision of  
17       panic, to flee.

18               But again, the reason she is fleeing is because of  
19       her fear that law enforcement is on the way. There were other  
20       passerby's that had stopped, that were in the area. That's  
21       well-documented in my motion that at 10:12, the 9-1-1 call  
22       comes in, and they actually see people still getting out of the  
23       truck. That's how instantaneous that call comes in.

24               And so it's that fear that law enforcement is on  
25       the way, and really, that's the only help that she reasonably

1 could have provided, was to get law enforcement there. But  
2 that help was already on the way, and that's why she fled,  
3 because of the fear that they were on the way.

4                   When law enforcement does arrive twelve minutes  
5 after that first 9-1-1 call, the officer doesn't even, you  
6 know, remove--he obviously couldn't remove, is my presumption,  
7 the truck from P.F. that tragically passed away. When they  
8 took the crime scene photos, or the photos of the wreck, he is  
9 still left there. They put something over his head. But it  
10 wasn't a situation where reasonable aid could have stopped what  
11 was the inevitable at that point, him passing away.

12                   I cite in my motion, eight minutes later, a 9-1-1  
13 call comes in, so that's--and they don't see any movement from  
14 the person pinned under the truck. So from that 10:12 call  
15 until 10:20, within those eight minutes, he has passed away,  
16 presumably. Again, that's confirmed when the officer gets  
17 there four minutes later.

18                   So if that act were in a rural place, more rural  
19 than this highway, and nobody was around and there was aid that  
20 could have possibly been rendered, if it was a close call, if  
21 someone was there to put on a tourniquet and this individual  
22 bled out or something, then I could see going to this level,  
23 extreme recklessness and second-degree murder.

24                   But there's no indication--in the report, it's  
25 described as head and neck trauma that caused P.F. to pass

1 away--that there was anything that Ms. Chavez or anybody else  
2 could have done on-scene in such a short window of time that  
3 would have changed this tragic outcome.

4                   Was it the best moral decision? No. But was it so  
5 disregarding his life that, in some way, even potentially  
6 caused the death, like the case cited where there's a man  
7 trapped in a compartment and the driver just walks away and  
8 shrugs his shoulder? That's extreme. That's complete  
9 disregard for human life.

10                  This moment of panic to run away because she  
11 believes law enforcement is on the way--and that's really what  
12 P.F. needed if he stood a chance--does not meet that same  
13 level, Your Honor.

14                  THE COURT: All right.

15                  MR. IVERSON: Thank you.

16                  THE COURT: All right. Thank you, Mr. Iverson.

17                  Mr. Redd?

18                  MR. REDD: Yes, Your Honor.

19                  So I first just want to address what the government  
20 is relying on here. The defense is relying heavily on the  
21 facts of *Lemus-Gonzalez*, which, obviously, that was a  
22 high-speed chase; there was intoxication involved; you know,  
23 there were many more occupants.

24                  That's not this case. The government understands  
25 and acknowledges that. We're relying on *Escobedo-Moreno*, and

1 the standard in that case that's cited there, the Fifth Circuit  
2 looks to a writing from Wayne LaFave and quotes: For  
3 depraved-heart murder, it is not a great amount of risk in the  
4 abstract which is decisive. It is what the defendant should  
5 realize to be the degree of risk in the light of the  
6 surrounding circumstances which he or she knows which is  
7 important.

8 So what's important here is the degree of risk and  
9 what the defendant actually knows. In this case, as you  
10 already stated, Judge, Ms. Chavez knew that the victim was  
11 alive. She knew that he was trying to get out from under the  
12 vehicle. She knew that she had caused the rollover accident.  
13 She knew that she could have rendered aid in some way or  
14 another.

15 But what she chose to do in that situation was to  
16 flee, because she was afraid of the consequences of her  
17 actions. She also knew that she was in possession of a small  
18 amount of methamphetamine. What others could have done in the  
19 situation, the people driving by on the road, is not of  
20 concern. What's of concern is what the driver, who had the  
21 duty and the standard of care, decided not to do.

22 The government also cited another Fifth Circuit  
23 case, *Conatser*, which also lays out some of the Court's  
24 analysis on malice aforethought. And in that case, the Court  
25 says that malice aforethought may be inferred when the

1 defendant grossly deviates from the standard of care to such an  
2 extent that a jury could conclude that he must have been aware  
3 of the serious risk of death or serious bodily injury.

4                   This was obviously a gross deviation of the  
5 standard of care that was required. And as the government has  
6 already raised in our filings, it does not appear likely that  
7 she tried to render any kind of aid at all, or that she tried  
8 to make any calls to 9-1-1. She did make calls. She had the  
9 wherewithal to make other calls, to text other people, to run.  
10 She had an awareness of what happened. She recalled what  
11 happened; she gave specific details. When she was interviewed  
12 later, after the accident, she was dishonest. She later  
13 changed her story.

14                   She understood what was going on. Was she injured?  
15 Were there injuries for herself? Yes, there were, but not to  
16 the extent that she couldn't understand what the risks were to  
17 the victim. And how other people responded in that situation,  
18 the other passengers or the other passerby's who were driving  
19 by, is not of concern. Here, it's what the defendant knew and  
20 how she acted, and that was extremely reckless and with wanton  
21 disregard for human life.

22                   THE COURT: So we know she made a phone call?

23                   MR. REDD: Yes, Your Honor.

24                   THE COURT: You've provided evidence of that.

25                   Correct?

1 MR. REDD: Yes, Your Honor.

2 THE COURT: Do we know who she called?

3 MR. REDD: Yes, Your Honor. It appears the  
4 contact--it's saved differently, but I believe it was her  
5 sister. I'm--

6 THE COURT: Not--it wasn't a 9-1-1 call?

7 MR. REDD: No, it was not 9-1-1. Your Honor, if  
8 you'll just give me one moment. It was a nickname in her  
9 phone, but as the government looked back at the PSR and some of  
10 the family members, it appeared-- I'm sorry, Your Honor, I  
11 don't have that name in front of me.

12 THE COURT: That's okay. You believe it to be a  
13 family member?

14 MR. REDD: Yes, Your Honor.

15 THE COURT: All right.

16 MR. IVERSON: Your Honor, if I may on that, per the  
17 phone record, that call was at 10:37, so that's twenty--about  
18 25 minutes after that 9-1-1 call after the accident.

19 THE COURT: Yeah, I understand. So it was well  
20 after the accident.

21 I think the point you're trying to make is, you  
22 know, she said in one or maybe multiple statements that she  
23 didn't have any cell reception and that's why she didn't call,  
24 but she was able to make a phone call?

25 MR. REDD: That's correct, Your Honor, yes.

1 THE COURT: Okay. Anything else, Mr. Redd?

2 MR. REDD: Your Honor, I just want to confirm. So  
3 the call that went through--I have it now, Your Honor--was to  
4 someone under contact name Yessy [phonetic]. But at 10:13,  
5 almost immediately after the accident, there was an attempted  
6 call to someone saved under LaGuava that doesn't show that the  
7 call connected. But there was at least a record of a call  
8 going out that wasn't answered here.

11 MR. IVERSON: At about 10:12.

12 MR. REDD: 10:12, so about a minute.

16 MR. REDD: That's correct, Your Honor.

17 THE COURT: And that was LaGuava?

18 MR. REDD: LaGuava, that's correct, Your Honor.

19 THE COURT: Okay. All right. Can you spell that  
20 just for the record?

21 MR. REDD: L-a-G-u-a-v-a.

22 THE COURT: Okay. All right. Thank you, Mr. Redd.

23 All right. Any rebuttal, Mr. Iverson?

24 MR. IVERSON: Your Honor, we will contest that the  
25 call went through, just wasn't answered. If an attempted call

1 is made, it may show in a phone record, but that doesn't mean  
2 there was a signal that actually-- You know, it will come up  
3 on your cell phone as "call failed." That may still be in your  
4 record. But again, the phone record itself shows 000, so not--  
5 no voicemail was answered. Because even if a voicemail  
6 answers, in my experience in forensic--with--cases, that will  
7 show at least some time, and at least there's automated--almost  
8 every cell phone has some type of voicemail. But again, this  
9 phone record doesn't even show one second. It shows zeros,  
10 which we suggest the evidence indicates that there was no  
11 service at that moment, that the call did not connect and was  
12 not simply answered.

13 THE COURT: Okay. All right. I need to make a few  
14 findings here. This is more complex and more fact-intensive  
15 than usual.

16 Whether 2A1.2 or 2A1.4 of the guidelines should  
17 apply as the proper cross-reference depends on Ms. Chavez's  
18 conduct and whether it constituted second-degree murder or  
19 involuntary manslaughter. To find second-degree murder, I must  
20 find that she acted with malice aforethought. That can be  
21 found in *Lemus-Gonzalez*, a Fifth Circuit case from 2009.

22 Malice aforethought applies to three different  
23 mental states: intent to kill, which is obviously not present  
24 here; intent to do serious bodily injury, again, not present  
25 here; but also, extreme recklessness and wanton disregard for

1 human life, also known as depraved heart.

2                   Involuntary manslaughter, in contrast, requires  
3 that the defendant acted with gross negligence, meaning a  
4 wanton or reckless disregard for human life, and knowledge that  
5 her conduct was a threat to the life of another, or knowledge  
6 of such circumstances as could reasonably have enabled the  
7 defendant to foresee the peril to which her act might subject  
8 another. That is also detailed in *Lemus-Gonzalez*.

9                   The difference, of course, between the two is  
10 extreme conduct. Extreme recklessness and wanton disregard for  
11 human life establishes second-degree murder and not mere  
12 recklessness and wanton disregard for human life.

13                   Determining whether the defendant's conduct was  
14 extreme in this sense often depends, in large part, on what she  
15 knew at the time. And that is *Escobedo-Moreno*, Fifth Circuit  
16 from 2019, relying on LaFave, L-a-F-a-v-e.

17                   I do find that the conduct here involved extreme  
18 recklessness and wanton disregard for human life for multiple  
19 reasons.

20                   First, based on the parties' filings and various  
21 investigative reports detailing statements by witnesses at the  
22 scene, Chavez, and Chavez's husband, the Court makes the  
23 follows findings:

24                   The fatality crash occurred around 10:12 when she  
25 lost control of the truck while driving in the rain. At the

1 time, she was transporting four aliens for financial gain. The  
2 truck was not designed to safely carry four passengers in the  
3 back seat, and at least one passenger did not have a seatbelt.  
4 Nevertheless, all four aliens whom she was transporting were  
5 seated in the back. As the driver, of course, she had a duty  
6 to ensure their safety.

7 During the crash, the truck rolled, and P.F. was  
8 ejected from the vehicle, and he did end up pinned underneath  
9 the truck. While she was initially unconscious from the crash,  
10 she was able to exit the vehicle, along with the other  
11 passengers. After she exited, she did see P.F. trapped and  
12 still alive. He was moving and trying to free himself.  
13 Nevertheless, she did not attempt to aid P.F. or to call for  
14 help.

15 At least two other vehicles arrived at the scene,  
16 but she did not ask them for help or to contact authorities.  
17 Instead, she and the other passengers decided to flee the scene  
18 out of fear of the possible consequences of the crash and  
19 getting caught transporting illegal aliens. She then proceeded  
20 to hide in a nearby field and abandoned house until the next  
21 morning. She sought the shelter, at least in part, because she  
22 was afraid that she would die if she didn't escape the  
23 elements.

24 Authorities arrived at 10:25, about 13 minutes  
25 later, after they first received the first call, but they were

1 unable to save P.F.'s life. The first call to law enforcement  
2 was initiated while Chavez was still in the truck.

3 I find that her claims that she attempted to lift  
4 the truck and that she did not call 9-1-1 because she lacked a  
5 cell signal are not credible.

6 Regarding any attempt to lift the truck, no other  
7 witness who was present at the scene made any statement about  
8 any individual from the truck attempting to assist P.F.  
9 Instead, the individual who first called 9-1-1 about the  
10 accident noted that a woman matching Chavez's description  
11 exited the vehicle, yelled, and then immediately started  
12 running from the scene.

13 Chavez herself gave at least three statements about  
14 the crash. In most of her statements, she admits that she  
15 started running once she got out of the vehicle because she was  
16 scared. Only once does she claim that she tried to lift the  
17 truck.

18 As for her cell phone, she initially claimed that  
19 she didn't call 9-1-1 because she was scared and had run away  
20 from the crash scene. Only after she had been arrested on this  
21 charge did she claim that she lacked cell signal. In addition,  
22 the government has provided a call log from the day in  
23 question, and that call log shows an outgoing call from her  
24 phone at 10:13, right when the first call to 9-1-1 from a  
25 witness was initiated.

1                   Now, regardless of whether that connected or not, I  
2 understand your point, Mr. Iverson, that, well, maybe it didn't  
3 connect. We do know who she tried to call, and it wasn't  
4 9-1-1. Whether it was connected or not, her attempt was to  
5 call LaGuava, and not to call for assistance. And then later,  
6 when we know if a call connected, it was to a family member.

7                   Moreover, it is evident that other people were  
8 present at the scene whom she could have asked for help if she  
9 had actually tried to first seek aid for the victim here, but  
10 she didn't, further calling into doubt her claims that she did  
11 try to help the victim before fleeing.

12                  Based on these findings, I do find that she acted  
13 with extreme recklessness and wanton disregard for P.F.'s life  
14 when she abandoned him to die from his injuries, trapped  
15 underneath the truck that she had been driving. As the driver,  
16 she was entrusted with that victim's safety; yet she was  
17 transporting him in an unsafe condition, knowing that there  
18 were too many people in the truck's back seat.

19                  P.F., like other aliens she was transporting, were  
20 simply commodities for financial gain, and once he posed a risk  
21 to her, as seeking help would risk her being caught, she looked  
22 at him; he was alive; and she left. She left him to die.

23                  Based on the information known to her at the time,  
24 she decided to flee. As a result, he faced a grave risk to his  
25 life due to a crash that she had caused after she had been

1 transporting him for financial gain in unsafe conditions.

2                   Rather than taking any effort to aid him, such as  
3 trying to get other individuals at the scene to call for help  
4 or attempt to help him herself, she fled to avoid the  
5 consequences. She was acutely aware of what would happen to  
6 P.F., as she herself decided that she could die if she did not  
7 escape the rain and the cold. Although she found some shelter  
8 for herself, she made no attempt to shelter P.F. The extreme  
9 callousness of that decision and of her actions warrant  
10 application of the second-degree murder cross-reference.

11                   The failure to take any action to help the victim  
12 here in his death mirrors other cases where courts have applied  
13 the second-degree murder guideline. In *Escobedo-Moreno*, the  
14 Fifth Circuit found that the defendant acted with extreme  
15 recklessness when he failed to alert Border Patrol that an  
16 alien whom he had been smuggling was likely trapped in a  
17 compartment in which the defendant had told him to hide. The  
18 defendant knew that the alien could not escape the compartment  
19 on his own and that the alien faced a grave risk that he would  
20 die unless someone informed Border Patrol about him.

21                   Likewise, here, Ms. Chavez knew that P.F. was still  
22 alive and trapped under a truck, unable to free himself, but  
23 P.F. faced a grave risk of dying if no one intervened. Rather  
24 than trying to help or seek aid from others, she distanced  
25 herself from the scene, abandoning him.

1 Courts have also applied the second-degree murder  
2 guideline when a defendant fails to alert authorities of danger  
3 posed to a person in her care or when a defendant fails to seek  
4 medical care for such persons. That authority is just  
5 persuasive authority from other circuits, but I do find it  
6 persuasive. I'm citing *United States vs. Conatser*,  
7 C-o-n-a-t-s-e-r, a Sixth Circuit case from 2008, and  
8 *United States vs. McDougle*, M-c-D-o-u-g-l-e, a Sixth Circuit  
9 case from 2003.

10                   While these cases typically involve circumstances  
11 where the defendant's failure to seek help clearly impacts the  
12 victim's fate, I find that she should not benefit from P.F. and  
13 his relatively quick death before the authorities could save  
14 him. She did not know that any attempt to save him would be  
15 futile. We know that now, but she did not know that then.

16 She does not claim that she fled because she  
17 thought he was effectively already dead. Instead, her main  
18 concern was avoiding consequences for herself, and she hid in  
19 an abandoned house to distance herself from that crash. For  
20 all she knew, P.F., like the alien in *Escobedo-Moreno*, could  
21 have slowly suffered while trapped. P.F.'s misfortune that his  
22 injuries were severe does not excuse or mitigate her decision  
23 to leave him to die helplessly.

1 550.023, which obligated her to stay at the scene and render  
2 reasonable aid to P.F. Her flight, therefore, grossly deviated  
3 from the reasonable standard of care required by state law.

4 In this case, she knew P.F. would die without  
5 assistance. Her very risky omission of not rendering aid  
6 suffices for second-degree murder, given her duty to act. And  
7 I am relying on LaFave, Section Fourteen-Four--I'm sorry--  
8 14.4(a), the Third Edition in the 2023 Update.

9 For all these reasons, I overrule the objection,  
10 and I do find that her conduct involved extreme recklessness  
11 and wanton disregard.

12 I think that was your only objection. Were there  
13 any other objections, Mr. Iverson?

14 MR. IVERSON: No, Your Honor.

15 THE COURT: Mr. Redd?

16 MR. REDD: No, Your Honor.

17 THE COURT: Having resolved all objections, I do  
18 adopt the PSR and the PSR addendum's factual findings and legal  
19 conclusions as my own.

20 All right. Ms. Chavez, if you would come back to  
21 the podium, please.

22 (PAUSE)

23 THE COURT: Okay. Ms. Chavez, thank you for your  
24 patience as I resolved that objection. I can now tell you your  
25 statutory sentencing range and your advisory guideline range.

1                   The statutory sentencing range, or the total  
2 possible range of punishment here, is death, imprisonment for  
3 any term of years or for life; and a fine of \$250,000, or both;  
4 and a period of supervised release of up to 5 years.

5                   The government is not seeking, of course, the  
6 imposition of the death penalty in this case.

7                   Under the guidelines manual, we have a total  
8 offense level of 35; your criminal history category is I; and  
9 that results in an advisory guideline range of 168 to  
10 210 months' imprisonment.

11                  Now, Probation notes that there are factors here  
12 that might warrant a departure or variance; in particular, that  
13 the Court might increase the sentence above the authorized  
14 range of death resulted--pardon me--from her conduct.

15                  I inform the parties that I do not intend to  
16 upwardly depart or vary from the advisory guideline range, but  
17 I'll hear both sides out before making that decision.

18                  All right. Mr. Iverson, I've received your motion  
19 for a downward variance. I appreciate that. It was well done.  
20 I know you are requesting a 30-to-37-month sentence, in light  
21 of her history and the facts of this case, among other things,  
22 but I'd be glad to hear any additional evidence or argument you  
23 have.

24                  MR. IVERSON: Thank you, Your Honor.

25                  As highlighted in that motion-- I'll just hit some

1 of the high points. This was a very difficult time in Raquel's  
2 life. Her second parent, her mother, had passed away from  
3 complications. She had been the caretaker to both her father  
4 and mother as they struggled with diabetes and other illnesses  
5 that resulted from that and was there as they passed. She took  
6 that very hard.

7 In her life, she experienced some domestic violence  
8 and was separated from her spouse right up until just maybe  
9 weeks or maybe a month before this incident occurred, and we're  
10 coming up on the one-year anniversary of that.

11 You can clearly see a lack of criminal history with  
12 Ms. Chavez. She is not a criminal--a career criminal, I would  
13 say. This was born out of desperation in a difficult time in  
14 her life that she made a decision that, as I stated earlier,  
15 she will carry with her no matter what this Court does. It's a  
16 burden that she carries, and I know it's a sincere one that she  
17 deeply regrets and is sad for the loss of P.F. that day, as  
18 well as just everything that occurred.

19 This year that she has almost spent in custody now  
20 since this accident is clearly the longest. She has never been  
21 in jail before. And so looking at this, I ask for such a  
22 drastic downward variance, again, because of the minimal  
23 criminal history and the initial act. The government's  
24 response to my memorandum cites some statistics. It was less  
25 than a one-percent chance that a death might occur.

1                   But again, I think, when you look at it in other  
2 situations, you know, people crammed in vehicle, seats put  
3 down-- I know I've been in front of this Court in a case where  
4 they were in the bed of a pickup truck, fleeing from law  
5 enforcement through dirt roads, and it was just by the grace of  
6 God that the individuals ejected in that case didn't die.

7                   And for those reasons that--the conduct itself that  
8 led to the accident, no fleeing of police and other gross  
9 things; it's just the way it went down-- And we understand the  
10 moral decision to leave in that moment was not a good one. But  
11 also in that statistic cited by the government, the average  
12 sentence for a case of transporting illegals is 15 months. And  
13 again, you have in front of you somebody with no criminal  
14 history, that evidence suggests this was the first and only  
15 time; this wasn't, you know, some repeat thing she was doing  
16 for months or years. It was one fateful decision. And a  
17 sentence we recommend of 32 months would be more than double  
18 the average sentence in these cases.

19                   She has a 7- and a 15-year-old son, Your Honor, and  
20 nothing hurts her more than not being there for them. Their  
21 father is in custody, we understand, for another domestic  
22 violence incident with his new partner after this incident and  
23 Raquel was put into custody. So they are without parents. Her  
24 deepest motivation is to get back to them.

25                   Something so tragic to happen on your first

1 decision to do criminal conduct like this, we feel like  
2 32 months is more than sufficient to deter her from any future  
3 conduct even coming close to criminal conduct. She has respect  
4 for the law, as attributed by her prior desires to serve in law  
5 enforcement. She recognizes that this conduct was a deviation  
6 not just from the law, but from who she is morally and  
7 internally. Again, a desperate, difficult time in her life  
8 that she can't go back and change, but she can move forward.

9                   And her deepest desire is to be there back with her  
10 kids, and we ask Your Honor for your mercy. There's no other  
11 thing I can ask for. But I don't see Ms. Chavez as a threat.  
12 I think the sentence up at 14 to 17½ years is somebody that's  
13 going to be a continuing threat. I think the message with  
14 32 months is sent that, even if you dabble for one time in this  
15 conduct, 32 months is a serious consequence to somebody that's  
16 never served in jail, that has minor children that are away  
17 from their parents.

18                   And we are also requesting placement for FPC Bryan.  
19 It's a camp just outside of Houston, Your Honor, in Bryan,  
20 Texas.

21                   THE COURT: I'll grant your request for a  
22 nonbinding placement recommendation for FPC Bryan.

23                   Was that it, Mr. Iverson?

24                   MR. IVERSON: That's it, Your Honor. Thank you.

25                   THE COURT: Okay. Let me just ask a question or

1 two. I tend to agree with you that, as far as a threat going  
2 forward, that factor doesn't weigh very heavily here. You  
3 focused on that, understandably, in your role. But just a just  
4 punishment, a sentence of less than 3 years, I don't even know  
5 how large the percentage would be as a reduction from the  
6 advisory range. When a person lost his life under the  
7 circumstances where he was put in a dangerous position in the  
8 first place and then was looked at while alive and then just  
9 abandoned, I have a hard time wrapping my head around that.

10 So just punishment is a concern to me, and  
11 deterrence is a concern to me. And I just want to be up-front  
12 with you about that, given the seriousness of what we face. As  
13 you mentioned, this is a dirty business. This is a dangerous,  
14 dangerous, dirty business. And these people are viewed as  
15 commodities just to make money, and they're desperate. They're  
16 in about the weakest bargaining position possible. They have  
17 no bargaining power, and so they take whatever is given, and  
18 what is given is often incredible danger, and people lose their  
19 lives. And one lost his life here. So what about just a just  
20 punishment and deterrence?

21 And then finally, the stats you gave me, surely  
22 those statistics aren't for cases that resulted in death, are  
23 they?

24 MR. IVERSON: Your Honor, it's all cases. And  
25 again, the reason-- I understand--and again, Raquel, more than

1 any of us, understands that P.F. lost his life. But again, the  
2 circumstances. To look at other cases across the board where--  
3 like I said, in front of this Court, somebody that has got  
4 people in the bed of a pickup truck, going offroad while  
5 actively fleeing law enforcement, driving recklessly and  
6 simply, by the grace of God, receives, you know, a sentence, I  
7 think, below the 32 months, because just--

8 THE COURT: Somebody didn't die.

9 MR. IVERSON: --somebody didn't die. But again--

10 THE COURT: Yeah. And so those stats, they are not  
11 from the--they are from the illegally transporting guideline?  
12 It's not from the second-degree murder cross-reference?

13 MR. IVERSON: That's correct. That's correct.

14 THE COURT: Okay.

15 MR. IVERSON: It's just illegal transportation of  
16 aliens. But again, while I understand that decision to leave  
17 him in that moment because she believed law enforcement was  
18 coming-- You know, there's varying situations where people  
19 die. And the accident itself, I think we can all agree, was  
20 just an accident, and her conduct was not so extreme that led  
21 to that, as we see in so many other cases.

22 While P.F. absolutely is a victim here, he was an  
23 adult that made a decision to try to, you know, get in here and  
24 get in that truck. Again, she didn't decide how many would be  
25 in there. She's not a big player in this. She didn't pick the

1 vehicle and some of those factors that, I think, would warrant  
2 something like this. If she had orchestrated this, she had  
3 decided how many would be in the truck, you know, maybe minors,  
4 and forcibly told them-- But there's no indication she was  
5 forceful or really in control of the situation. She just  
6 agreed to be a driver.

7 THE COURT: Okay.

8 MR. IVERSON: I think these are all mitigating  
9 factors, Your Honor, that would warrant this variance.

10 THE COURT: There are definitely mitigating factors  
11 here, and I'm going to consider those in trying to fashion a  
12 reasonable sentence. And this is--yeah, this is both unusual;  
13 in some ways, mitigating and, in some ways, aggravating, but--

14 MR. IVERSON: Yes, Your Honor.

15 THE COURT: Okay. Ms. Chavez, you have the right  
16 to tell me anything you would like to tell me. You do not have  
17 to say anything if you don't want to, and I won't hold it  
18 against you if you don't. Is there anything you'd like to say?

19 THE DEFENDANT: I just want to ask for forgiveness.  
20 It's a wrong choice I did. It's my first time being  
21 incarcerated. I promise you it will be my last. I accept my  
22 responsibility. I accept whatever sentence you impose, Your  
23 Honor.

24 THE COURT: Okay. All right. Thank you, ma'am. I  
25 appreciate that statement, and I will take it into account.

1 Mr. Redd?

2 MR. REDD: Yes, Your Honor. Thank you.

3 Ms. Chavez made a series of choices that land her  
4 in the courtroom today, Your Honor. She chose to engage in  
5 alien transporting, which is inherently, as you said, a  
6 dangerous business. It's so dangerous because, so many times,  
7 the people involved in the transportation have so little regard  
8 for the lives that are being transported. And when push comes  
9 to shove, the interests of the people trying to make money off  
10 of these aliens outshadow and outshine the dangers that the  
11 individuals face. And that's what happened here.

12 I'd like to address, Your Honor, the motion for  
13 downward variance. A downward variance to that degree would  
14 not reflect the purposes of 3553; specifically, the need to  
15 reflect the seriousness of this offense, to promote respect for  
16 the law, to provide a just punishment.

1 in its filings, and I say that again today.

2                   But her choice to leave the scene spoke volumes  
3 about her priorities, and her only priority was her own  
4 self-preservation. In this case, she saw the victim alive,  
5 struggling to be freed from the vehicle. She knew he was  
6 alive. She knew she could help. She knew that there were ways  
7 to help, even if she just stayed. And she left. She fled the  
8 scene. She evaded responsibility. She was dishonest when  
9 interviewed by officers. It's complete disregard for the  
10 victim and a complete lack of respect for the law.

11                   With regard to her lack of criminal history, as the  
12 government pointed out in its response to the motion for  
13 downward variance, that's not uncommon in these cases. The  
14 majority of defendants in these cases have little criminal  
15 history. That's the way this scheme usually works. People who  
16 have little criminal history who are American citizens are used  
17 to transport illegal aliens. But what's rare is that people  
18 die. And what's most likely even rarer is that when people  
19 die, they are abandoned.

20                   Your Honor, there is a serious need to provide a  
21 just punishment in this case, a need for the victim, for the  
22 family members of the victim who are traumatized by this to see  
23 that justice is done for their relative who was discarded on  
24 the side of the road. And for that reason, the government  
25 recommends a sentence at the top of the advisory guidelines,

1 210 months.

2 THE COURT: All right. Thank you, Mr. Redd.

3 Mr. Redd, speaking of the victim, you have informed  
4 me in writing, but I need to confirm again today, are there any  
5 victims or victim representatives here that would like to speak  
6 to the Court?

7 MR. REDD: There are not, Your Honor.

8 THE COURT: Okay. It's my understanding that the  
9 victim's wife was so distraught that she told the  
10 United States, "I don't want to hear anything else about this  
11 case." Am I remembering that correctly?

12 MR. REDD: That's correct, Your Honor, yes.

13 THE COURT: Okay. All right. Thank you, Mr. Redd.

14 Mr. Redd, do you know any reason why the Court  
15 cannot lawfully impose sentence at this time?

16 MR. REDD: No, Your Honor.

17 THE COURT: Mr. Iverson?

18 MR. IVERSON: No, Your Honor.

19 THE COURT: I've carefully reviewed the presentence  
20 report and its addendum. I inform the defendant that the plea  
21 agreement is finally accepted. Judgment and sentence will be  
22 consistent with it.

23 I'm required by statute to impose a sentence that  
24 is sufficient, but not greater than necessary, to comply with  
25 the purposes of sentencing set forth in Section 3553(a)(2), and

1 to consider all the factors of sentencing in that statute,  
2 which I have done.

3 Ms. Chavez, all that means is, I consider certain  
4 guideposts in every case in trying to figure out what's a  
5 reasonable sentence. One of those is the nature and  
6 circumstances of the offense, or what did you do. We've  
7 already talked extensively about that. I have adopted the  
8 presentence report, so I don't need to go over everything  
9 again.

10 But you heard my findings previously. Suffice it  
11 to say, you know and you admit that you engaged in human  
12 trafficking for money. You did so under dangerous conditions  
13 where at least one person was not able to have a seatbelt.  
14 Whether you chose those conditions or not doesn't really  
15 matter. You got in that truck under those circumstances and  
16 got on the road.

17 We know what happened. I know that--and I don't  
18 dispute or contest--that the accident was just that, it was an  
19 accident. It's not like some of those cases that your attorney  
20 has noted to me where someone truly is, you know, going down  
21 the road a million miles an hour because they're running from  
22 police, and intoxicated, and they fly half a block in the air  
23 and land on a metal pole. That didn't happen here.

24 But nevertheless, those conditions that you put  
25 those people in resulted in a death. You did get in an

1 accident. One of those illegal aliens is pinned under a truck.  
2 You know it. You look at him. And I don't doubt the regret  
3 that you feel, and I'm glad to hear that, but you did abandon  
4 him.

5 And sadly, that is a common characteristics in  
6 cases like this, and it's hard to understand why. But you're  
7 not the first person that's abandoned an illegal alien who is  
8 trying to be transported. This happens, which tells me that,  
9 in these cases, they are just viewed as commodities, and people  
10 turn their back on them. They abandon them in truck trailers.  
11 They abandon them in cabinets. They abandon them even when  
12 they are pinned under a truck on the side of the road in  
13 horrible conditions. And I can't ignore that. That is  
14 depraved heart, and it's incredibly disturbing and concerning.

15 Now, there are mitigating factors here. You have  
16 no prior criminal history whatsoever. You have no prior  
17 juvenile adjudications or adult convictions. This isn't as bad  
18 as some of those cases where the truck driver absolutely knows  
19 this guy is in a locked cabinet, and all he has got to do is  
20 say the word and the guy will live. It's not as bad as the DWI  
21 going down the street at a million miles an hour. But, make no  
22 mistake, it is still depraved-heart, second-degree murder under  
23 these circumstances.

24 You weren't fully forthcoming with authorities.  
25 Your story did change, and that also can't be ignored here.

1                   I have to impose a sentence that reflects a lot of  
2 things, both the nature and circumstances and your history, but  
3 also, the seriousness of the offense. I have to promote  
4 respect for the law. I have to provide a just punishment. I  
5 have to afford adequate deterrence, and I have to protect the  
6 public. All of those, except to protect the public, weigh very  
7 heavily here.

8                   Mr. Iverson, I don't dispute that she has learned  
9 her lesson and that this is incredibly traumatic for her, as  
10 well as the victim. I hope that's the case. But all of the  
11 others weigh very heavily, because a person did lose his life  
12 and was abandoned to die alone by the person who was supposed  
13 to be getting him safely from Point A to Point B.

14                  After considering all the statutory factors, the  
15 purposes of sentencing, and the parties' arguments, I am not  
16 going to go to the top of the range, because I don't think it  
17 would be reasonable given the mitigation and the mitigating  
18 circumstances we have here. I'm not going to go above either.  
19 But I'm not going to grant your motion for a downward departure  
20 or variance. That motion is denied. There's just a callous  
21 abandonment of a person, so a downward variance or a downward  
22 departure is unwarranted.

23                  I have determined, after considering all of the  
24 appropriate factors, that a sentence of 192 months is  
25 sufficient, but not greater than necessary.

1                   I inform both sides that, although I believe the  
2 guideline calculations announced today were correct, to the  
3 extent they were incorrectly calculated, I would have imposed  
4 the same sentence without regard to that range, and I would  
5 have done so for the same reasons, in light of the 3553(a)  
6 factors.

7                   The sentence is going to run concurrently with any  
8 sentence imposed in Case Number 23-3714 and 23-3715 and  
9 23-3716, all pending in the 106th Judicial District Court of  
10 Lynn County, Texas, all of which are related to this offense.

11                  Upon release, you're going to be on supervised  
12 release for a term of 5 years. While on release, you shall  
13 comply with the mandatory conditions listed in your presentence  
14 report and in Section 3583(d).

15                  Mr. Iverson, can you confirm that you and your  
16 client received and discussed my written notice of intent to  
17 impose the standard and special conditions?

18                  MR. IVERSON: We did, Your Honor. That's been  
19 reviewed and signed and filed with the court. We have no  
20 objection, Your Honor.

21                  THE COURT: Hearing no objections, they are adopted  
22 today. They will be included in my judgment. I find they are  
23 reasonable and they relate to all of the appropriate statutory  
24 considerations, and they impose no greater deprivation of  
25 liberty than reasonably necessary under the statute.

1 I'm waiving a fine.

2 But you must pay the mandatory special assessment  
3 to the United States of \$100, due and payable immediately.

4 I find that you also do not have the financial  
5 resources or future earning capacity to pay the Justice for  
6 Victims of Trafficking Act assessment, so that is waived.

7 I will recommend that, while incarcerated, you  
8 receive appropriate substance abuse and mental health  
9 treatment, but I didn't lengthen your term of imprisonment to  
10 promote rehabilitation, because I'm barred from doing so under  
11 the statute.

12 Ms. Chavez, you do have the right to appeal from  
13 your conviction and your sentence. If you'd like to appeal,  
14 you need to file a notice of appeal within 14 days of today in  
15 this court. If you want to do that, just tell Mr. Iverson. He  
16 is very familiar with that process, and he can help you get  
17 that done.

18 He can also ask that the costs of the appeal go to  
19 the United States, and not to you.

20 Do you understand those rights?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Mr. Iverson, anything else  
23 from the defense?

24 MR. IVERSON: Your Honor, I object to the sentence  
25 as substantively unreasonable for the reasons I've argued

1 today, that it's too long of a sentence given the mitigation  
2 that I have argued.

3 THE COURT: Okay. I understand that objection, and  
4 it is overruled.

5 Your objection to the substantive reasonableness of  
6 the sentence is preserved.

7 Mr. Redd, anything else from the United States?

8 MR. REDD: No, Your Honor.

9 THE COURT: Okay. At this time, Ms. Chavez, you  
10 are remanded to the custody of the United States Marshal. Good  
11 luck to you.

12 MR. REDD: May I be excused, Your Honor?

13 THE COURT: Yes, Mr. Redd. Thank you for being  
14 here.

15 I want to thank both Mr. Redd and Mr. Iverson for  
16 their excellent representation of their clients and their great  
17 advocacy.

18 (END OF HEARING)

19  
20  
21  
22  
23  
24  
25

I, Mechelle Daniel, Federal Official Court Reporter in and for the United States District Court for the Northern District of Texas, do hereby certify pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

6 /s/ Mechelle Daniel DATE JANUARY 8, 2024

7 MECHELLE DANIEL, CSR #3549  
FEDERAL OFFICIAL COURT REPORTER

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

*Mechelle Daniel, Federal Official Court Reporter*  
(806) 744-7667 28-11

23-11173.124

## APPENDIX C

Case 5:23-cr-00029-H-BQ Document 39 Filed 11/16/23 Page 1 of 7 PageID 145

### UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

UNITED STATES OF AMERICA

v.

RAQUEL DELGADO CHAVEZ

#### § JUDGMENT IN A CRIMINAL CASE

§

§

§ Case Number: **5:23-CR-00029-H-BQ(1)**

§ USM Number: **54273-510**

§ **Wade William Iverson**

§ Defendant's Attorney

#### THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	<b>1 of the indictment filed April 11, 2023.</b>
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. §§ 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(iv) - TRANSPORTATION OF AN ILLEGAL ALIEN RESULTING IN DEATH	11/25/2022	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)  
 Count(s)  is  Remaining count(s) are dismissed on the motion of the United States

It is ordered that the defendant must 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 must notify the court and United States attorney of material changes in economic circumstances.

**November 16, 2023**

Date of Imposition of Judgment

Signature of Judge

**James Wesley Hendrix**  
**United States District Judge**  
Name and Title of Judge

**November 16, 2023**

Date

23-11173.53

DEFENDANT: RAQUEL DELGADO CHAVEZ  
CASE NUMBER: 5:23-CR-00029-H-BQ(1)

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

192 months as to count 1. This sentence shall run concurrently with any sentence imposed in Case Nos. 23-3714, 23-3715, and 23,3716, all pending in the 106<sup>th</sup> Judicial District Court, Lynn County, Texas.

The court makes the following recommendations to the Bureau of Prisons: Incarceration at FPC Bryan, Texas.

The Court recommends that, while incarcerated, the defendant receive appropriate substance-abuse and mental-health treatment, but the Court did not lengthen the defendant's prison term to promote rehabilitation. *See Tapia v. United States*, 564 U.S. 319 (2011).

The defendant is remanded to the custody of the United States Marshal.  
 The defendant shall surrender to the United States Marshal for this district:

at  a.m.  p.m. on  
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
 before 2 p.m. on  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

## 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 UNITED STATES MARSHAL

23-11173.54

DEFENDANT: RAQUEL DELGADO CHAVEZ  
CASE NUMBER: 5:23-CR-00029-H-BQ(1)

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Five (5) years.**

## MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must 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.  
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

23-11173.55

DEFENDANT: RAQUEL DELGADO CHAVEZ  
CASE NUMBER: 5:23-CR-00029-H-BQ(1)

## STANDARD CONDITIONS OF SUPERVISION

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 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.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at [www.txnp.uscourts.gov](http://www.txnp.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

23-11173.56

DEFENDANT: RAQUEL DELGADO CHAVEZ  
CASE NUMBER: 5:23-CR-00029-H-BQ(1)

### **SPECIAL CONDITIONS OF SUPERVISION**

1. 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 \$40.00 per month.
2. The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$40.00 per month.

23-11173.57

DEFENDANT: RAQUEL DELGADO CHAVEZ  
 CASE NUMBER: 5:23-CR-00029-H-BQ(1)

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$100.00	\$.00	\$.00	\$.00	\$.00

The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.  
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution

the interest requirement for the  fine  restitution is modified as follows:

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

23-11173.58

DEFENDANT: RAQUEL DELGADO CHAVEZ  
 CASE NUMBER: 5:23-CR-00029-H-BQ(1)

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payments of \$ \_\_\_\_\_ due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:  
**It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several  
 See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

23-11173.59

## APPENDIX D

Case: 23-11173 Document: 105-1 Page: 1 Date Filed: 11/22/2024

# United States Court of Appeals for the Fifth Circuit

---

No. 23-11173

---

United States Court of Appeals  
Fifth Circuit

**FILED**

November 22, 2024

UNITED STATES OF AMERICA,

Lyle W. Cayce  
Clerk

*Plaintiff—Appellee,*

*versus*

RAQUEL DELGADO CHAVEZ,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:23-CR-29-1

---

### ON PETITION FOR REHEARING EN BANC

Before SMITH, STEWART, and DUNCAN, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

## APPENDIX E

---

### Provisions Involved

---

Title 8, Section 1324 of the United States Code provides, in pertinent part:

§1324. Bringing in and harboring certain aliens

(a) Criminal penalties

(1)(A) Any person who-

\* \* \* \*

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

\* \* \* \*

shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs-

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.

The U.S. Code defines “murder” at 18 U.S.C. § 1111(a):

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery; or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

Federal Rule of Criminal Procedure 52(a) provides:

**Rule 52. Harmless and Plain Error**

(a) **Harmless Error.** Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

U.S.S.G. § 2A1.2 provides:

**§2A1.2. Second Degree Murder**

(a) **Base Offense Level: 38**

U.S.S.G. § 2L1.1 is reprinted in full below.

## PART L — OFFENSES INVOLVING IMMIGRATION, NATURALIZATION, AND PASSPORTS

### 1. IMMIGRATION

#### **§2L1.1. Smuggling, Transporting, or Harboring an Unlawful Alien**

(a) Base Offense Level:

- (1) **25**, if the defendant was convicted under 8 U.S.C. § 1327 of a violation involving an alien who was inadmissible under 8 U.S.C. § 1182(a)(3);
- (2) **23**, if the defendant was convicted under 8 U.S.C. § 1327 of a violation involving an alien who previously was deported after a conviction for an aggravated felony; or
- (3) **12**, otherwise.

(b) Specific Offense Characteristics

- (1) If (A) the offense was committed other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), and (B) the base offense level is determined under subsection (a)(3), decrease by **3** levels.
- (2) If the offense involved the smuggling, transporting, or harboring of six or more unlawful aliens, increase as follows:

NUMBER OF UNLAWFUL ALIENS SMUGGLED, TRANSPORTED, OR HARBORED		INCREASE IN LEVEL
(A)	6–24	add <b>3</b>
(B)	25–99	add <b>6</b>
(C)	100 or more	add <b>9</b> .

- (3) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by **2** levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by **4** levels.
- (4) If the offense involved the smuggling, transporting, or harboring of a minor who was unaccompanied by the minor's parent, adult relative, or legal guardian, increase by **4** levels.

(5) (Apply the Greatest):

- (A) If a firearm was discharged, increase by **6** levels, but if the resulting offense level is less than level **22**, increase to level **22**.
- (B) If a dangerous weapon (including a firearm) was brandished or otherwise used, increase by **4** levels, but if the resulting offense level is less than level **20**, increase to level **20**.
- (C) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels, but if the resulting offense level is less than level **18**, increase to level **18**.
- (6) If the offense involved intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person, increase by **2** levels, but if the resulting offense level is less than level **18**, increase to level **18**.
- (7) If any person died or sustained bodily injury, increase the offense level according to the seriousness of the injury:

DEATH OR DEGREE OF INJURY	INCREASE IN LEVEL
(A) Bodily Injury	add <b>2</b> levels
(B) Serious Bodily Injury	add <b>4</b> levels
(C) Permanent or Life-Threatening Bodily Injury	add <b>6</b> levels
(D) Death	add <b>10</b> levels.

(8) (Apply the greater):

- (A) If an alien was involuntarily detained through coercion or threat, or in connection with a demand for payment, (i) after the alien was smuggled into the United States; or (ii) while the alien was transported or harbored in the United States, increase by **2** levels. If the resulting offense level is less than level **18**, increase to level **18**.
- (B) If (i) the defendant was convicted of alien harboring, (ii) the alien harboring was for the purpose of prostitution, and (iii) the defendant receives an adjustment under §3B1.1 (Aggravating Role), increase by **2** levels, but if the alien engaging in the prostitution had not attained the age of 18 years, increase by **6** levels.
- (9) If the defendant was convicted under 8 U.S.C. § 1324(a)(4), increase by **2** levels.

## (c) Cross Reference

- (1) If death resulted, apply the appropriate homicide guideline from Chapter Two, Part A, Subpart 1, if the resulting offense level is greater than that determined under this guideline.

**Commentary**

**Statutory Provisions:** 8 U.S.C. §§ 1324(a), 1327. For additional statutory provision(s), *see* Appendix A (Statutory Index).

**Application Notes:**

1. **Definitions.**—For purposes of this guideline:

***The offense was committed other than for profit*** means that there was no payment or expectation of payment for the smuggling, transporting, or harboring of any of the unlawful aliens.

***Number of unlawful aliens smuggled, transported, or harbored*** does not include the defendant.

***Aggravated felony*** has the meaning given that term in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)), without regard to the date of conviction for the aggravated felony.

***Child*** has the meaning set forth in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. § 1101(b)(1)).

***Spouse*** has the meaning set forth in 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(35)).

***Immigration and naturalization offense*** means any offense covered by Chapter Two, Part L.

***Minor*** means an individual who had not attained the age of 18 years.

***Parent*** means (A) a natural mother or father; (B) a stepmother or stepfather; or (C) an adoptive mother or father.

***Bodily injury***, ***serious bodily injury***, and ***permanent or life-threatening bodily injury*** have the meaning given those terms in the Commentary to §1B1.1 (Application Instructions).

2. **Prior Convictions Under Subsection (b)(3).**—Prior felony conviction(s) resulting in an adjustment under subsection (b)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).
3. **Application of Subsection (b)(6).**—Reckless conduct to which the adjustment from subsection (b)(6) applies includes a wide variety of conduct (e.g., transporting persons in the trunk or engine compartment of a motor vehicle; carrying substantially more passengers than the rated capacity of a motor vehicle or vessel; harboring persons in a crowded, dangerous, or inhumane

## §2L1.2

condition; or guiding persons through, or abandoning persons in, a dangerous or remote geographic area without adequate food, water, clothing, or protection from the elements). If subsection (b)(6) applies solely on the basis of conduct related to fleeing from a law enforcement officer, do not apply an adjustment from §3C1.2 (Reckless Endangerment During Flight). Additionally, do not apply the adjustment in subsection (b)(6) if the only reckless conduct that created a substantial risk of death or serious bodily injury is conduct for which the defendant received an enhancement under subsection (b)(5).

4. **Application of Subsection (b)(7) to Conduct Constituting Criminal Sexual Abuse.**— Consistent with Application Note 1(M) of §1B1.1 (Application Instructions), “serious bodily injury” is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. § 2241 or § 2242 or any similar offense under state law.
5. **Inapplicability of §3A1.3.**—If an enhancement under subsection (b)(8)(A) applies, do not apply §3A1.3 (Restraint of Victim).
6. **Interaction with §3B1.1.**—For the purposes of §3B1.1 (Aggravating Role), the aliens smuggled, transported, or harbored are not considered participants unless they actively assisted in the smuggling, transporting, or harboring of others. In large scale smuggling, transporting, or harboring cases, an additional adjustment from §3B1.1 typically will apply.
7. **Upward Departure Provisions.**—An upward departure may be warranted in any of the following cases:
  - (A) The defendant smuggled, transported, or harbored an alien knowing that the alien intended to enter the United States to engage in subversive activity, drug trafficking, or other serious criminal behavior.
  - (B) The defendant smuggled, transported, or harbored an alien the defendant knew was inadmissible for reasons of security and related grounds, as set forth under 8 U.S.C. § 1182(a)(3).
  - (C) The offense involved substantially more than 100 aliens.

**Background:** This section includes the most serious immigration offenses covered under the Immigration Reform and Control Act of 1986.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective January 15, 1988 (amendments 35, 36, and 37); November 1, 1989 (amendment 192); November 1, 1990 (amendment 335); November 1, 1991 (amendment 375); November 1, 1992 (amendment 450); May 1, 1997 (amendment 543); November 1, 1997 (amendment 561); November 1, 2006 (amendments 686 and 692); November 1, 2007 (amendment 702); November 1, 2009 (amendment 730); November 1, 2014 (amendment 785); November 1, 2016 (amendment 802); November 1, 2018 (amendment 805).
------------------------	---

---

## §2L1.2. Unlawfully Entering or Remaining in the United States

---

- (a) Base Offense Level: 8

## APPENDIX F

---

### Excerpts of Sentencing Transcripts (Chavez C.A. Reply Br. 15–19)

---

Sent. Tr. at 54 <i>United States v. Bishop,</i> No. 5:23-cr-63 (N.D. Tex.)  Sentencing Date: Feb. 15, 2024	I find and I inform both sides that I believe the guideline calculations were correctly announced today, and correctly calculated, but even if they weren't, this is the sentence I would impose without regard to that range, and I would do so for the same reasons, in light of the 3553(a) factors.
Sent. Tr. at 19 <i>United States v. Castillo-Lopez,</i> No. 5:22-cr-98 (N.D. Tex.)  Sentencing Date: Oct. 19, 2023	I inform the parties that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.
Sent. Tr. at 11 <i>United States v. Felix-Samaniego,</i> No. 5:23-cr-96 (N.D. Tex.)  Sentencing Date: Mar. 21, 2024	I inform both sides that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.

<p>Sent. Tr. at 19  <i>United States v. Hayden</i>,          No. 5:23-cr-80          (N.D. Tex.)</p> <p>Sentencing Date:          Feb. 1, 2024</p>	<p>I inform both sides that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p>
<p>Sent. Tr. at 26  <i>United States v. Hazen</i>,          No. 6:23-cr-12          (N.D. Tex.)</p> <p>Sentencing Date:          Dec. 7, 2023</p>	<p>I inform both sides that I believe the guideline calculations announced today were correct, but, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p>
<p>Sent. Tr. at 16  <i>United States v. Jones</i>,          No. 5:23-cr-13          (N.D. Tex.)</p> <p>Sentencing Date:          Oct. 5, 2023</p>	<p>I inform the parties that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons.</p>

<p>Sent. Tr. at 18  <i>United States v. Meyer,</i>          No. 5:23-cr-57          (N.D. Tex.)</p> <p>Sentencing Date:          Dec. 14, 2023</p>	<p>I inform both sides that, although I believe the guideline calculations announced were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p>
<p>Sent. Tr. at 39  <i>United States v. Pyle,</i>          No. 5:23-cr-92          (N.D. Tex.)</p> <p>Sentencing Date:          April 4, 2024</p>	<p>I'm going to inform both sides that I believe the guideline calculations announced today were correct, but, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors here.</p>
<p>Sent. Tr. at 29  <i>United States v. Reyes,</i>          No. 5:23-cr-65          (N.D. Tex.)</p> <p>Sentencing Date:          Feb. 29, 2024</p>	<p>I announce that, although I believe the guideline calculations were correct here, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to this range, and I would have done so for the same reasons.</p>

<p>Sent. Tr. at 15  <i>United States v. Sanchez</i>,          No. 5:23-cr-30          (N.D. Tex.)</p> <p>Sentencing Date:          Sept. 21, 2023</p>	<p>I believe that the guideline calculations that I announced were correct, but, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p>
<p>Sent. Tr. at 14–15  <i>United States v. Thomas</i>,          No. 5:22-cr-65          (N.D. Tex.)</p> <p>Sentencing Date:          July 26, 2023</p>	<p>I inform the parties that, although I believe the guideline calculations announced were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p>
<p>Sent. Tr. at 13  <i>United States v. Thompson</i>,          No. 5:23-cr-32          (N.D. Tex.)</p> <p>Sentencing Date:          Nov. 16, 2023</p>	<p>I inform both sides that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p>

<p>Sent. Tr. at 22–23  <i>United States v.</i>  <i>Trevino,</i>          No. 5:19-cr-31          (N.D. Tex.)</p> <p>Sentencing Date:          Oct. 25, 2019</p>	<p>Finally, I do note that, although I find that the guideline calculations were correct, I do think it's important to note that, even if we were incorrect and if we were at 188 to 235, I would have imposed a 235 sentence. I don't think 188 or anything less than 235 would be a reasonable sentence here.</p> <p>I understand your objection. I thank you for making it. It was a very fair objection to make. Even if I had sustained it, I would impose a 235-month sentence, and I would have done so for the same reasons, in light of the Section 3553(a) factors.</p>
<p>Sent. Tr. at 14  <i>United States v.</i>  <i>Truelock,</i>          No. 5:23-cr-37          (N.D. Tex.)</p> <p>Sentencing Date:          Oct. 26, 2023</p>	<p>I believe and I inform the parties that I believe that the guideline calculations announced today were correct, but, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p>

<p>Sent. Tr. at 24  <i>United States v. Villareal</i>,  No. 5:23-cr-75  (N.D. Tex.)</p> <p>Sentencing Date:  Jan. 18, 2024</p>	<p>I inform both sides that, although I believe the guideline calculations announced today were correct, to the extent they were incorrectly calculated, I would have imposed the same sentence without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p>
<p>Sent. Tr. at 14  <i>United States v. West</i>,  No. 5:22-cr-37  (N.D. Tex.)</p> <p>Sentencing Date:  Sept 28, 2022</p>	<p>I believe that the guideline calculations announced today were correct, but, to the extent they were incorrectly calculated, I inform the parties that this is the sentence I would have imposed without regard to that range, and I would have done so for the same reasons, in light of the 3553(a) factors.</p>
<p>Sent. Tr. at 21–22  <i>United States v. Young</i>,  No. 5:22-cr-29  (N.D. Tex.)</p> <p>Sentencing Date:  Oct 27, 2022</p>	<p>Again, as I have stated, I believe the guideline calculations were correct, but, even if they weren't, this sentence imposed is independent of the guidelines. I would impose the same sentence even if they were lower and, as represented by the defendant, 63 to 78. I would impose the same sentence for all the same reasons.</p>