United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 30, 2024
Lyle W. Cayce
Clerk

No. 23-11135

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LORENZO VAZQUEZ-ALBA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:22-CR-356-1

Before ELROD, *Chief Judge*, and HIGGINBOTHAM and SOUTHWICK, *Circuit Judges*.

JENNIFER WALKER ELROD, *Chief Judge*:

Lorenzo Vazquez-Alba pleaded guilty to unlawful reentry after removal, in violation of 8 U.S.C. § 1326(a) and (b)(2), and failure to register as a sex offender, in violation of 18 U.S.C. § 2250(a). He now appeals his conviction and sentence. Because the district court did not err, we AFFIRM.

I

Lorenzo Vazquez-Alba is a Mexican citizen who lawfully entered the United States in 1986 and became a legal permanent resident the following year.

In 2008, Vazquez-Alba was arrested in Dallas, Texas, after a juvenile accused him of using her as a paid prostitute. According to the victim, Vazquez-Alba had sexual intercourse with her at least twice and supplied her with marijuana and cocaine. Vazquez-Alba pleaded guilty in Texas state court to aggravated assault causing seriously bodily injury for this offense, and was placed in a diversionary program and sentenced to five years of community supervision (*i.e.*, probation).

Also in 2008, Vazquez-Alba's wife accused him of having sexual intercourse with a close family member. The family member alleged that Vazquez-Alba would "make her have sexual intercourse with the defendant since she was 5 years old." Following an investigation and state criminal charges, Vazquez-Alba pleaded guilty in 2011 to aggravated sexual assault of a child under the age of 14 for these allegations.

Later in 2011, a Texas state court revoked Vazquez-Alba's probation for the 2008 offense and sentenced him to concurrent terms of eight years' imprisonment for each of the 2008 and 2011 crimes. Vazquez-Alba subsequently lost his permanent resident status while serving his sentence and was deported to Mexico in 2017.

Sometime later, Vazquez-Alba unlawfully reentered the United States. In August 2022, police officers at the Methodist Hospital in Dallas, Texas, arrested him for driving a stolen vehicle.[1] The officers discovered that

[1] According to Vazquez-Alba's presentence investigation report, there are no allegations that Vazquez-Alba stole the vehicle. Rather, a customer at Vazquez-Alba's tire-

Vazquez-Alba had an expired driver's license and an immigration hold, and that he had failed to register as a sex offender as he was required to do following his 2011 conviction.

Vazquez-Alba was later indicted in federal court for: (1) illegal reentry after removal in violation of 8 U.S.C. § 1326(a) and (b)(2) and (2) failure to register as a sex offender in violation of 18 U.S.C. § 2250(a). Vazquez-Alba pleaded guilty to both counts without a written plea agreement. For his illegal reentry count, Vazquez-Alba faced a 20-year statutory maximum under 8 U.S.C. § 1326(b)(2), which applies where the defendant reentered the United States after removal following an "aggravated felony."

Before sentencing, probation officers prepared Vazquez-Alba's presentence investigation report, or "PSR." The PSR declined to group the illegal-reentry and failure-to-register counts under U.S.S.G. § 3D1.2 because they did not involve substantially the same harm. The PSR then calculated an adjusted Guidelines offense level of 18 for the illegal-reentry offense and an adjusted Guidelines offense of 14 for the failure-to-register offense. After applying the multi-count adjustment, grouping rules, and a three-level reduction for acceptance of responsibility, Vazquez-Alba's total offense level was 17. The PSR assigned three criminal history points to each of Vazquez-Alba's two prior Texas convictions, which resulted in a criminal history score of six and a criminal history category of III. These calculations produced an advisory guideline range of 30 to 37 months' imprisonment.

Vazquez-Alba made two objections to the PSR. He first argued that the indictment was flawed because it did not allege a prior aggravated felony.

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repair shop gave it to him to pay an outstanding debt. License-plate readers at the hospital alerted local police officers that the car had been reported stolen after Vazquez-Alba parked there.

He acknowledged that his argument was foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and that he raised it only to seek further review. He also objected to the PSR's grouping determination, arguing that the illegal-reentry and failure-to-register counts should be grouped together under U.S.S.G. § 3D1.2.

At sentencing, the district court overruled Vazquez-Alba's objections and sentenced him to an above-Guidelines sentence of 45 months' imprisonment.

Vazquez-Alba timely appealed.

II

On appeal, Vazquez-Alba argues that the district court erred in entering judgment for his illegal-reentry count under 8 U.S.C. § 1326(b)(2) for two reasons. First, he contends that the indictment failed to plead his aggravated offense. As he did before the district court, he acknowledges that this argument is foreclosed. *See Almendarez-Torres*, 523 U.S. at 226–27; *United States v. Garza-De La Cruz*, 16 F.4th 1213, 1213 (5th Cir. 2021). Second, he argues that his 2011 conviction for aggravated sexual assault of a child under 14 is not an "aggravated felony" for purposes of § 1326(b)(2), which would mean that the 20-year statutory maximum does not apply.

Vazquez-Alba also appeals his sentence, again raising two arguments. First, he contends that his reentry and failure to register are "closely related" under U.S.S.G. § 3D1.2 and thus should have been grouped. Second, he argues that his two state court convictions should be treated as a "single sentence" under U.S.S.G. § 4A1.2(a)(2).

A

We first address Vazquez-Alba's argument that his 2011 conviction is not an aggravated felony. He concedes that he did not raise this argument

below, and thus it is reviewed for plain error. On plain-error review, Vazquez-Alba must show that "the district court (1) committed an error, (2) that is plain, and (3) that affects [his] substantial rights." *United States v. Parra*, 111 F.4th 651, 656 (5th Cir. 2024) (citations and internal quotation marks omitted). If he does so, we may exercise our "discretion to correct the error only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.*

Generally, an alien who has been previously removed faces a 2-year statutory maximum for the crime of unlawful reentry. 8 U.S.C. § 1326(a). However, an alien "whose removal was subsequent to a conviction for commission of an aggravated felony" faces a 20-year statutory maximum. *Id.* § 1326(b)(2). The term "aggravated felony" is defined to include, *inter alia*, "sexual abuse of a minor." 8 U.S.C. § 1101(a)(43)(A).

The parties agree that Vazquez-Alba's 2008 crime for aggravated assault does not qualify as an aggravated felony.[2] So, we must determine whether Vazquez-Alba's 2011 conviction for aggravated sexual assault of his close family member constitutes the aggravated felony of "sexual abuse of a minor."

We employ the "categorical approach" to answer that question. *Shroff v. Sessions*, 890 F.3d 542, 544 (5th Cir. 2018). Under the categorical approach, courts "focus solely on whether the elements of the crime of conviction sufficiently match the elements of generic [sexual abuse of a

[2] The district court did not specify whether it applied the penalty provision found in § 1326(b)(2) because of the 2008 aggravated assault, the 2011 aggravated sexual assault of a child under 14, or both. Vazquez-Alba correctly argues, and the government does not dispute, that his 2008 aggravated assault does not constitute an "aggravated felony" for purposes of § 1326(b)(2) under this court's precedent. *See United States v. Gomez Gomez*, 23 F.4th 575, 577–78 (5th Cir. 2022) (determining that Texas aggravated assault does not qualify as an aggravated felony for convictions under § 1326(b)(2)).

minor], while ignoring the particular facts of the case." *Mathis v. United States*, 579 U.S. 500, 504 (2016). If the state statute of conviction "covers any more conduct than the generic offense," the state statute is not a categorical match, "even if the defendant's actual conduct . . . fits within the generic offense's boundaries." *Id.*

The generic definition of "sexual abuse of a minor" is conduct that (1) involves a child, (2) is sexual in nature, and (3) is abusive. *Shroff*, 890 F.3d at 544. The Supreme Court has defined the generic meaning of "minor" as requiring "that the victim be younger than 16."[3] *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 390–91, 396–97 (2017). Further, the Fifth Circuit has adopted a "per se rule that gratifying or arousing one's sexual desires in the presence of a child is abusive because it involves taking undue or unfair advantage of the minor." *Contreras v. Holder*, 754 F.3d 286, 294–95 (5th Cir. 2014) (citations omitted).

Here, the relevant Texas criminal statute, Texas Penal Code § 22.021(a)(1)(B)(i) & (2)(B), prohibits (1) intentionally or knowingly "caus[ing] the penetration of the anus or sexual organ of a child by any means" when (2) "the victim is younger than 14 years of age." The 14-year age requirement falls within *Esquivel-Quintana*'s definition of a "minor." Further, the statute of conviction meets the requirements of the generic definition because Vazquez-Alba's crime is inherently sexual and involves the gratification of sexual desires in the presence of a child. *See, e.g.*, *Contreras*, 754 F.3d at 294–95 (holding that a state statute criminalizing

[3] In *Esquivel-Quintana*, the Supreme Court stated that the age of consent may be different under statutes criminalizing sexual intercourse with a minor by someone who occupies a special relationship of trust. 581 U.S. at 396–97. Although Vazquez-Alba undoubtedly maintained a special relationship of trust with his family member, his statute of conviction does not rely upon that relationship, and thus the 16-year age of consent applies here.

carnal knowledge of a child constitutes "sexual abuse of a minor"); *United States v. Rivas*, 836 F.3d 514, 515 (5th Cir. 2016) (same for state statute prohibiting "sexual conduct" when victim is between thirteen and sixteen years of age).

Vazquez-Alba, however, contends that the Texas statute is not a categorical match to the generic sexual abuse of a minor because the generic offense requires an "age differential" between the victim and the perpetrator, and the Texas offense does not. He cites several national surveys of state criminal statutes, which reveal that many states require that the victim be younger than the defendant by some statutorily prescribed number of years. *See, e.g.*, La. Rev. Stat. § 14:80 (criminalizing "carnal knowledge of a juvenile" when the victim is between 13 and 17 years of age and the defendant is at least four years older than the victim).

But in *United States v. Rodriguez*, we unequivocally stated that the generic offense does not contain an age differential "because the definitions of 'sexual abuse of a minor' in legal and other well-accepted dictionaries do not include such an age-differential requirement."[4] 711 F.3d 541, 562 n.28 (5th Cir. 2013) (en banc). Although the Supreme Court later abrogated one of *Rodriguez*'s holdings, it declined to reach the age-differential question. *Esquivel-Quintana*, 581 U.S. at 397 ("We leave for another day whether the generic offense requires a particular age differential between the victim and

[4] Vazquez-Alba suggests that, although *Rodriguez* rejected a four-year age differential in the generic offense, it left open the possibility for other, shorter age differentials. True, the defendant in *Rodriguez* argued that the generic offense contained a four-year age differential. 711 F.3d at 562 n.28. But in rejecting that argument, we explained that the generic offense does not contain *any* age differential because "legal and other well-accepted dictionaries" do not include them. *Id.*; *see also United States v. Escalante*, 933 F.3d 395, 404–05 (5th Cir. 2019) (explaining that the "generic crime of 'sexual abuse of a minor' does not require an age differential"). This argument therefore fails.

the perpetrator . . . ."). Indeed, after *Esquivel-Quintana*, we explained that the Supreme Court "did not abrogate *Rodriguez*'s holding that the generic crime of 'sexual abuse of a minor' does not require an age differential. That holding remains the law of this circuit." *United States v. Escalante*, 933 F.3d 395, 404–05 & n.13 (5th Cir. 2019); *see also United States v. Montanez-Trejo*, 708 F. App'x 161, 170–71 (5th Cir. 2017) (finding no plain error post-*Esquivel-Quintana* because the Supreme Court declined to decide the age-differential question); *United States v. Hernandez-Vasquez*, 699 F. App'x 404, 405 (5th Cir. 2017) (same). Accordingly, Vazquez-Alba's age-differential argument fails.

Because Vazquez-Alba's statute of conviction matches the generic definition of "sexual abuse of a minor," the district court properly entered judgment under 8 U.S.C. § 1326(b)(2) and applied that statute's 20-year statutory maximum. He therefore cannot show any error, much less plain error, in his conviction. Further, as he concedes, his remaining argument on the validity of his indictment is foreclosed. *See Almendarez-Torres*, 523 U.S. at 226–27. Accordingly, the district court did not err in applying the 20-year statutory maximum found in 8 U.S.C. § 1326(b)(2).

B

Vazquez-Alba also contends that the district court should have grouped together his unlawful-reentry and failure-to-register counts because they involve "closely related" conduct under U.S.S.G. § 3D1.2. Both parties agree that Vazquez-Alba properly preserved this argument. Accordingly, we review the district court's grouping determination *de novo*. *United States v. Garcia-Figueroa*, 753 F.3d 179, 190 (5th Cir. 2014).

When a defendant is convicted of multiple counts, the sentencing court must follow prescribed rules in the Guidelines to ascertain the appropriate offense level. First, the court determines whether the counts

may be grouped. U.S.S.G. § 3D1.2. If counts are grouped, the court then determines the applicable offense level for the group(s). *Id.* §§ 3D1.3, 4.

Under § 3D1.2, counts shall be grouped if they involve "substantially the same harm," which is defined in four separate subsections *Id.* § 3D1.2. Vazquez-Alba argues that his two counts should be grouped under subsections (a), (b), and (d).

Subsections (a) and (b) are similar, and allow for grouping:

> (a) When counts involve the same victim and the same act or transaction.
> (b) When counts involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan.

Id. When there is not an identifiable "victim" for purposes of these subsections, "the 'victim' . . . is the societal interest that is harmed." *Id.* cmt. n.2. If the societal interests are "closely related," the counts may be grouped.[5]

Vazquez-Alba contends that the crimes to which he pleaded guilty serve the same societal interests: "identifying and excluding aliens convicted of felony sex offenses and punishing those who evade detection."

We have previously explained, however, that the societal interest of illegal reentry statutes is to "enforce[] immigration laws." *United States v. McLauling*, 753 F.3d 557, 559 (5th Cir. 2014). The same cannot be said of

[5] Application Note 2 provides two examples. The crimes of unlawfully entering the United States and possession of fraudulent evidence of citizenship should be grouped because they serve similar societal interests: "the interests protected by laws governing immigration." U.S.S.G. § 3D1.2 cmt. n.2. By contrast, the sale of controlled substances and immigration offenses "are not grouped together because different societal interests are harmed." *Id.*

Vazquez-Alba's failure-to-register count. Congress passed the Sex Offender Registration and Notification Act, which established the sex-offender registration regime, in order "to protect the public from sex offenders and offenders against children." *See* 34 U.S.C. § 20901. Because the crimes to which Vazquez-Alba pleaded guilty serve distinct societal interests, the district court did not err in declining to group them under subsections (a) and (b). *See McLauling*, 753 F.3d at 559; *United States v. Yerena-Magana*, 478 F.3d 683, 689 (5th Cir. 2007) (concluding that drug offenses and illegal-reentry offenses served different societal interests).

Further, the district court did not err in declining to group under subsection (d). Subsection (d) permits grouping:

> (d) When the offense level is determined largely on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm, or if the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior.

U.S.S.G. § 3D1.2(d). Subsection (d) also specifically enumerates several Guidelines provisions that are "to be grouped," which we have interpreted to mean that these provisions are "susceptible to grouping" with other provisions if the requirements of the subsection are met. *United States v. Goncalves*, 613 F.3d 601, 605–06 (5th Cir. 2010) (citation omitted). Subsection (d) also lists several provisions that are specifically excluded from grouping. U.S.S.G. § 3D1.2(d). Provisions not enumerated in either list may or may not be grouped following a "case-by-case determination." *Id.*

Subsection (d) lists § 2A3.5, which applies to Vazquez-Alba's failure-to-register count, in the "to be grouped" list. *Id.* Because § 2L1.2, which applies to his illegal-reentry count, is not listed in either list, we must determine whether it otherwise qualifies for grouping with § 2A3.5.

Application Note 6 of § 3D1.2 explains that subsection (d) allows for grouping of multiple offenses if they "are of the same general type and otherwise meet the criteria for grouping under this subsection." U.S.S.G. § 3D1.2 cmt. n.6. "The 'same general type' of offense is to be construed broadly." *Id.* Vazquez-Alba contends that his offenses are of the "same general type" because they are both "continuing crimes based on status and concealment."

While doubtful of his categorization, we need not decide whether these offenses are of the same general type because Vazquez-Alba fails to explain how § 2L1.2 meets subsection (d)'s grouping criteria. For example, he does not argue that § 2L1.2 determines base offense levels by examining aggregate harm. *See id.* § 3D1.2(d) (allowing for grouping if offense levels are based on a "measure of aggregate harm").

Nor does he explain how "the offense behavior is ongoing or continuous in nature and the offense guideline is written to cover such behavior." *Id.* He suggests that both crimes are "continuing," but that is insufficient. Rather, the relevant Guidelines provision must be "written" to cover the continuing conduct. *See United States v. Solis*, 299 F.3d 420, 461 (5th Cir. 2002); *see also United States v. Ketcham*, 80 F.3d 789, 796 (3d Cir. 1996) (explaining that subsection (d) applies when the applicable Guidelines provision accounts for a "course of harmful conduct"). For example, § 2Q1.2(b)(1)(A) ("Mishandling of Hazardous or Toxic Substances") is written to cover continuing conduct because it allows for additional offense levels if the offense was "ongoing, continuous, or repetitive." *See Ketcham*, 80 F.3d at 796.

The same cannot be said of § 2L1.2. Under that provision, a defendant's offense level is established the moment that he unlawfully reenters the United States because the offense level is based solely on his pre-

removal conduct. *Id.* § 2L1.2(b). The Guideline does not allow for additional offense levels based on any "ongoing, continuous, or repetitive" conduct, or any conduct that occurs after reentry. *Compare* U.S.S.G. § 2L1.2(b), *with* § 2Q1.2(b)(1)(A). Accordingly, § 2L1.2 does not qualify for grouping under subsection (d). *See United States v. Jimenez-Cardenas*, 684 F.3d 1237, 1241 (11th Cir. 2012) (holding that § 2L1.2 "does not fall within the purview of, or list of covered offenses in, § 3D1.2(d)").

Vazquez-Alba has not shown that each of his two counts are eligible for grouping under § 3D1.2. Thus, the district court correctly declined to group them.

C

Finally, Vazquez-Alba maintains that the sentences for his 2008 and 2011 convictions should be treated as a "single sentence" under U.S.S.G. § 4A1.2(a)(2) because he was sentenced for them simultaneously. If treated as a single sentence, his convictions would qualify Vazquez-Alba for criminal history category II, rather than III, lowering his advisory Guidelines range. Vazquez-Alba concedes that, because he did not raise this issue in the district court, it is reviewed for plain error.

The Guidelines require that when a defendant has "multiple prior sentences," the court must "determine whether those sentences are counted separately or treated as a single sentence." U.S.S.G. § 4A1.2(a)(2). Relevant here, sentences should be treated separately unless "the sentences were imposed on the same day." *Id.*

Vazquez-Alba argues the sentences for his two convictions constitute a single sentence because the Texas state court imposed concurrent 8-year sentences, one for each conviction, on the same day at a consolidated hearing in 2011. We disagree.

For § 4A1.2 purposes, Vazquez-Alba was sentenced for his 2008 aggravated assault conviction in 2008, not 2011, when he pleaded guilty and was placed on five years of probation under a diversionary program. U.S.S.G. § 4A1.2(f) ("A diversionary disposition resulting from a finding or admission of guilt . . . is counted as a sentence under § 4A1.1(c) even if a conviction is not formally entered . . . ."). It is of no moment that a state court later revoked his probation for the 2008 crime, sentenced him again for that crime, and also sentenced him for the 2011 crime, all on the same day in 2011. *See United States v. Castro-Perpia*, 932 F.2d 364, 365–66 (5th Cir. 1991) (treating sentence imposed pursuant to revocation and sentence imposed for new criminal conduct as separate sentences, even though they ran concurrently and were imposed at the same time); *United States v. Lopez-Gonzalez*, 275 F. App'x 297, 297–98 (5th Cir. 2008).

Vazquez-Alba cannot show that the district court erred in failing to treat his sentences as a single sentence under U.S.S.G. § 4A1.2(a)(2). He therefore fails on prong one of plain-error review. *See Parra*, 111 F.4th at 656.

* * *

Because Vazquez-Alba's 2011 conviction is a categorical match to the generic offense of "sexual abuse of a minor" and because his remaining argument is foreclosed, the district court did not err in applying the 20-year statutory maximum found in 8 U.S.C. § 1326(b)(2). Further, the district court did not err in sentencing Vazquez-Alba because his two federal counts are not eligible for grouping and his two state-court sentences are properly treated separately under the Guidelines.

Accordingly, we AFFIRM.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

LORENZO VAZQUEZ-ALBA

JUDGMENT IN A CRIMINAL CASE

Case Number: **3:22-CR-00356-B(1)**
USM Number: **20995-510**
Maria Antoinette Pedraza
Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	**Counts 1 and 2 of the two-count superseding Indictment filed October 18, 2022**
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☐	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
8 U.S.C. § 1326(a) & (b)(2) Illegal Reentry After Removal from the United States	08/16/2022	1
18 U.S.C. § 2250(a) Failure to Register as a Sex Offender	08/16/2022	2

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 1 of the original indictment ☒ is ☐ 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 2, 2023
Date of Imposition of Judgment

Signature of Judge

JANE J BOYLE, UNITED STATES DISTRICT JUDGE
Name and Title of Judge

November 3, 2023
Date

23-11135.76

DEFENDANT: LORENZO VAZQUEZ-ALBA
CASE NUMBER: 3:22-CR-00356-B(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:

45 months on each of Counts 1 and 2, to run concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be allowed to serve his sentence at a BOP facility in the North Texas area, if eligible.

☒ 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

DEFENDANT: LORENZO VAZQUEZ-ALBA
CASE NUMBER: 3:22-CR-00356-B(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **five (5) years as to Count 2. No term of supervised release imposed on Count 1.**

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.

DEFENDANT: LORENZO VAZQUEZ-ALBA
CASE NUMBER: 3:22-CR-00356-B(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.

Defendant's Signature _____ Date _____

DEFENDANT: LORENZO VAZQUEZ-ALBA
CASE NUMBER: 3:22-CR-00356-B(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall have no contact with persons under the age of 18 except when directly supervised by an adult who is approved in advance by the probation officer, nor shall the defendant loiter near places where children may frequently congregate. The defendant shall neither seek nor maintain employment or volunteer work at any location and/or activity where persons under the age of 18 congregate and the defendant shall not date or intentionally develop a personal relationship with anyone who has children under the age of 18, without prior permission of the probation officer.

The defendant shall register with state and local law enforcement as directed by the probation officer in each jurisdiction where the defendant resides, is employed, and is a student. The defendant shall provide all information required in accordance with state registration guidelines. Initial registration shall be completed within 3 business days after sentencing/release from confinement. The defendant shall provide written verification of registration to the probation officer within 3 business days following registration. This registration shall be renewed as required by the defendant's assigned tier. The defendant shall, no later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least one jurisdiction and inform that jurisdiction of all changes in the information required in the sex offender registry.

In the event the defendant is not deported upon release from imprisonment or surrendered to a duly authorized immigration official, the defendant must immediately report, continue to report, or surrender to U.S. Immigration and Customs Enforcement and follow all of their instructions and reporting requirements until any deportation proceedings are completed.

As a condition of supervised release, upon completion of his term of imprisonment, the defendant is to be surrendered to a duly authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported, the defendant shall remain outside the United States unless legally authorized to reenter. In the event the defendant is not deported upon release from imprisonment or surrendered to a duly authorized immigration officer for deportation as described above, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall comply with the standard conditions recommended by the U.S. Sentencing Commission and shall comply with the mandatory and special conditions stated in the Judgment.

DEFENDANT: LORENZO VAZQUEZ-ALBA
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$200.00	$.00	$.00	$.00	$.00

☐ The determination of restitution is deferred until after such determination. An *Amended Judgment in a Criminal Case (AO245C)* will be entered

☐ 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.

DEFENDANT: LORENZO VAZQUEZ-ALBA
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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 *(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 $200.00 for Counts 1 and 2, 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.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**No. 3:22-CR-356-B**
	§	
LORENZO VAZQUEZ ALBA,	§	
	§	
Defendant.	§	

ELEMENTS AND PUNISHMENT OF THE OFFENSES AND FACTUAL RESUME

In support of the Defendant's plea of guilty to the offenses in the two-count Indictment charging a violation of 8 U.S.C. § 1326(a), Count One, and 18 U.S.C. § 2250(a), Count Two, **LORENZO VAZQUEZ ALBA**, and his counsel, Assistant Federal Public Defender Maria A. Pedraza, stipulate and agree to the following:

ELEMENTS OF THE OFFENSES

Count One of the Indictment alleges a violation of 8 U.S.C. § 1326(a). The elements of this offenses are as follows:

1. 1. That the defendant was an alien at all times alleged in the Indictment;

   2. That the defendant had previously been deported or removed from the United States of America;

   3. That sometime after being removed from the United States of America, the defendant was found in the United States of America; and

   4. That the defendant had not received the express consent of the Attorney General of the United States of America or the Secretary of the Department of Homeland Security to reapply for admission since the time of his previous deportation or removal.

Count Two of the Indictment alleges a violation of 18 U.S.C. § 2250(a). The elements of this offense as follows:

1. The defendant was required to register under the Sex Offender Registration and Notification Act (SORNA), as charged;

2. The defendant traveled in interstate commerce or foreign commerce; and

3. The defendant knowingly failed to register registration as SORNA requires (he did not register as required after he traveled from one State to another State).

These three elements must be proven to have occurred in sequence.

PUNISHMENT FOR THE OFFENSES

The maximum penalties that a district court can impose on Count One for a violation of 8 U.S.C. § 1326(a) include the following:

1. imprisonment not to exceed twenty (20) years if removal was subsequent to a conviction for commission an aggravated felony;

2. a fine not to exceed $250,000.00, or twice any pecuniary gain to the defendant or loss to the victim(s);

3. the sentencing court may impose a term of supervised release not to exceed three years; if the defendant violates the conditions of supervised release, it could be imprisoned for up to three years, but for no more than two years at one time; and

4. a mandatory special assessment of $100.00.

The maximum penalties that a district court can impose on Count Two for a violation of 18 U.S.C. § 2250(a) include the following:

1. a term of imprisonment not to exceed 10 years;

2. a fine not to exceed $250,000, or twice any pecuniary gain to Mr. Vazquez Alba or loss to the victim(s);

3. Pursuant to 18 U.S.C. § 3583(k), the sentencing court must impose a term of supervised release of at least five years and may impose a lifetime term of supervised release; if Mr. Vazquez Alba violates the conditions of supervised

release, pursuant to §§ 3583(e)(3), (h), and (k), under certain circumstances, he could be imprisoned for at least five years and possibly face a further term of supervised release up to and including life, which could lead to further imprisonment upon any revocation;

4. a mandatory special assessment of one-hundred dollars must be imposed;

5. restitution, if applicable, must be imposed; and

6. costs of incarceration and supervision.

SENTENCING IN THIS CASE

Mr. Vazquez Alba has discussed the Federal Sentencing Guidelines with his attorney and understands that the sentence in this case will be imposed by the district court after it has considered the applicable statutes, the Sentencing Guidelines, and the factors included in 18 U.S.C. § 3553(a). However, neither the Guidelines nor § 3553(a) are binding and the district court, in its discretion, may sentence Mr. Vazquez Alba to the statutory maximum penalties, if that "sentence [is] sufficient, but not greater than necessary, to comply with the purposes set forth in . . . [§ 3553](a)(2)[.]" Mr. Vazquez Alba understands that if the district court imposes a sentence greater than he expects, he will not be able to withdraw his plea of "guilty" based solely upon that higher sentence as long as the sentence is within the statutory maximum punishment. Congress has abolished parole, so if the district court sentences Mr. Vazquez Alba to a term of imprisonment, he understands that he will not be released on parole.

Mr. Vazquez Alba understands that a conviction for the aforementioned offense is a felony conviction and a felony conviction may deprive him of important civil rights. **Because Mr. Vazquez Alba is not a citizen of this country, he further understands that a conviction for the aforementioned offense will have a negative impact on his ability to remain in this Country or return to this Country after removal from this Country.**

ADDITIONAL POTENTIAL RESTRICTION ON FREEDOM THAT CAN BE IMPOSED AFTER COMPLETION OF AN IMPOSED TERM OF IMPRISONMENT

Mr. Vazquez Alba understands that under certain circumstances the Attorney General of the United States of America, the Director of the Bureau of Prisons, or an individual that the Attorney General authorizes may "initiate a civil commitment proceeding" against anyone in the legal custody of the Bureau of Prisons by "fil[ing] a certificate in United States District Court asserting that the person is 'sexually dangerous' under the provisions of the Act." Timms v. Johns, 627 F.3d 525, 526 (4th Cir. 2010), cert. denied, 131 S. Ct. 2938 (2011) (citing § 4248); see United States v. Joshua, 607 F.3d 379, 381-91 (4th Cir. 2010); United States v. Carta, 592 F.3d 34, 36-42 (1st Cir. 2010); United States v. Hernandez-Arenado, 571 F.3d 662, 663-667 (7th Cir. 2009).

To civilly commit an individual, the government must show the following by clear and convincing evidence:

> [The] individual (1) has previously 'engaged or attempted to engage in sexually violent conduct or child molestation,' (2) currently 'suffers from a serious mental illness, abnormality, or disorder,' and (3) 'as a result of' that mental illness, abnormality, or disorder is 'sexually dangerous to others,' in that 'he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.'

United States v. Comstock, 130 S. Ct. 1949, 1954 (2010) (quoting and citing 18 U.S.C. §§ 4247(a)(5) & (a)(6)); see United States v. Comstock, 627 F.3d 513, 515-16 (4th Cir. 2010).

Mr. Vazquez Alba understands that the government may initiate such a proceeding against him, and if the government initiates such a proceeding and meets its burden in an adversarial process, he will remain in custody until "the director of the facility determines that . . . [his] 'condition is such that he is no longer sexually dangerous to others, or will not be sexually

dangerous to others if released under a prescribed regimen' of care or treatment for his condition . . . ." Comstock, 627 F.3d at 516 (citing and quoting § 4248).

Mr. Vazquez Alba further understands that, under the Sex Offender Registration and Notification Act, which is a federal law that is independent of any requirement of state law, he must register as a sex offender and keep the registration current in at least each of the following jurisdictions: where he resides, where he is an employee, and where he is a student. He understands that the requirements for registration include providing at least his name, his residence address, and the names and addresses of any places where he is or will be an employee or a student, amongst other information. Mr. Vazquez Alba further understands that the requirement to keep the registration current includes informing at least one jurisdiction in which he resides, is an employee, or is a student no later than three business days after any change of his name, residence, employment, or student status. Mr. Vazquez Alba understands that failure to comply with these obligations subjects him to prosecution for, *inter alia*, failure to register under 18 U.S.C. § 2250, which is punishable by a fine or 10-years of imprisonment or both.

Lastly, Mr. Vazquez Alba understands that a conviction for the charged felony-offense will deprive him of important civil rights, which include, *inter alia*, the right to vote, the right to hold public office, the right to sit on a jury, and the right to actually or constructively possess a firearm.

CONSTITUTIONAL RIGHTS AND WAIVER OF THOSE RIGHTS

1. Mr. Vazquez Alba understands that he has the following constitutional rights:

   a. The right to plead not guilty to the charged offenses;

   b. The right to have a speedy trial by a jury in this District;

   c. The right to have his guilt proven beyond a reasonable doubt;

d. The right to confront and cross-examine witnesses and to call and subpoena witnesses and material in his defense; and

e. The right to not be compelled to incriminate himself.

2. Mr. Vazquez Alba understands that he also has the right to waive these constitutional rights.

Mr. Vazquez Alba waives the aforementioned rights and pleads guilty to the offense alleged in the one-count Indictment charging him with violating 8 U.S.C. § 1326(a). Mr. Vazquez Alba understands the nature and the elements of the offense for which he is pleading guilty and agrees that the following stipulated facts are true and will be submitted as evidence.

STIPULATED FACTS

On or about August 16, 2022, in the Dallas Division of the Northern District of Texas, Lorenzo Vazquez Alba, an alien, was found in the United States of America (after having previously been removed therefrom on or about November 2, 2017), without having received the express consent of the Attorney General of the United States of America or the Secretary of the Department of Homeland Security to reapply for admission since the time of his previous removal. Mr. Vazquez Alba's conduct violates 8 U.S.C. § 1326(a).[1]

Furthermore, from on or about December 1, 2021 and continuing through on or about August 16, 2022, in the Dallas Division of the Northern District of Texas, and elsewhere, Lorenzo Vazquez-Alba, a person required to register under the Sex Offender Registration and Notification Act, traveled in interstate and foreign commerce and knowingly failed to register and update his

[1] Mr. Vazquez Alba understands that the district court is not limited to considering only these stipulated facts, but may consider facts for which Mr. Vazquez Alba did not stipulate. *Cf.* 18 U.S.C. §§ 3553(a); 3661; *Pepper v. United States*, 562 U.S. 476, 480-508 (2011).

registration as a sex offender as required by the Sex Offender Registration and Notification Act. Mr. Vazquez Alba's conduct violates 18 U.S.C. § 2250(a).

VOLUNTARINESS OF THE PLEA OF GUILTY

Mr. Vazquez Alba has thoroughly reviewed his constitutional rights, the facts of his case, the elements of the offense, the statutory penalties, the Guidelines,[2] and 18 U.S.C. § 3553(a) with his attorney. Mr. Vazquez Alba has received satisfactory explanations regarding every aspect of this document and the alternatives to signing this document, and he is satisfied with his attorney's representation of him in this case. Mr. Vazquez Alba concedes that he is guilty of Counts One and Two of the Indictment, and he concludes that it is in his best interests to plead guilty.

Mr. Vazquez Alba understands that he has retained his right to appeal and that he has the ability and right to file a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit. Knowing this, Mr. Vazquez Alba understands that if he wants to appeal either his sentence or his conviction, he will have to file a Notice of Appeal within 14 days of the date that the Judgment in his case is filed.

Mr. Vazquez Alba further understands and agrees that to exercise his right to an appeal, he must, within 14 days of the date that the Judgment is filed, contact the Office of the Federal Public Defender, Northern District of Texas, Dallas Division, and request that a Notice of Appeal be filed in his case. Mr. Vazquez Alba understands that typically the appeal will not cost him any money,

[2] Though undersigned counsel and Mr. Vazquez Alba have discussed how the relevant chapters of the Federal Sentencing Guidelines will apply to Mr. Vazquez Alba, and undersigned counsel and Mr. Vazquez Alba have discussed the potential guideline range in his case, Mr. Vazquez Alba understands that the conversations were about potential punishments and not a guarantee of what the punishment will be. Mr. Vazquez Alba understands that only the district judge in his case will make that decision and that the decision will only be made at the sentencing hearing after the district judge has heard the evidence and arguments in his case.

unless the district court orders that he pay some amount of money, and that, unless otherwise ordered, the Office of the Federal Public Defender will write and file the appeal on his behalf.

AGREED TO AND SIGNED on April 14, 2023.

LORENZO VAZQUEZ ALBA
Defendant

MARIA A. PEDRAZA
Assistant Federal Public Defender
New York Bar Number 4087029
Attorney for Lorenzo Vazquez Alba

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

LORENZO VAZQUEZ-ALBA
a/k/a Lorenzo Vasquez-Alba
a/k/a Lorenzo Alba Vasquez

NO. 3:22-CR-00356-B

(Supersedes Indictment returned on September 20, 2022)

SUPERSEDING INDICTMENT

The Grand Jury charges:

Count One
Illegal Reentry After Removal from the United States
(Violation of 8 U.S.C. § 1326(a))

On or about August 16, 2022, in the Dallas Division of the Northern District of Texas, the defendant, **Lorenzo Vazquez-Alba**, an alien, was found in the United States after having been deported and removed therefrom on or about November 2, 2017, without having received the express consent of the United States Attorney General or the Secretary of the Department of Homeland Security to reapply for admission since the time of the defendant's previous deportation and removal.

In violation of 8 U.S.C. § 1326(a), the penalty for which is found at 8 U.S.C. § 1326(b)(2).

Count Two
Failure to Register as a Sex Offender
(Violation of 18 U.S.C. § 2250(a))

From on or about December 1, 2021 and continuing through on or about August 16, 2022, in the Dallas Division of the Northern District of Texas, and elsewhere, the defendant, **Lorenzo Vazquez-Alba**, a person required to register under the Sex Offender Registration and Notification Act, traveled in interstate and foreign commerce and knowingly failed to register and update his registration as a sex offender, as required by the Sex Offender Registration and Notification Act.

In violation of Title 18, United States Code, Section 2250(a).

A TRUE BILL:

FOREPERSON

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UNITED STATES ATTORNEY

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