

No. 17 – _____

IN THE
SUPREME COURT OF THE UNITED STATES

EMILIO GARCIA-PINEDO,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

Appendix A

United States v. Garcia-Pinedo

United States Court of Appeals for the Fifth Circuit

November 24, 2017, Filed

No. 17-10107 Summary Calendar

Reporter

704 Fed. Appx. 382 *; 2017 U.S. App. LEXIS 23803 **

UNITED STATES OF AMERICA, Plaintiff-Appellee v.
EMILIO GARCIA-PINEDO, Defendant-Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: **[**1]** Appeal from the United States District Court for the Northern District of Texas. USDC No. 3:16-CR-194-1.

[*United States v. Garcia-Pinedo*, 2016 U.S. Dist. LEXIS 134800 \(N.D. Tex., Sept. 29, 2016\)](#)

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Amanda Brooke Harris, U.S. Department of Justice, Criminal Division, Appellate Section, Washington, DC; James Wesley Hendrix, Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of Texas, Dallas, TX.

For EMILIO GARCIA-PINEDO, Defendant - Appellant: Brandon Elliott Beck, Federal Public Defender's Office, Northern District of Texas, Lubbock, TX; Laura S. Harper, Esq., Assistant Federal Public Defender, Federal Public Defender's Office, Northern District of Texas, Dallas, TX.

Judges: Before KING, ELROD, and HIGGINSON, Circuit Judges.

Opinion

[*382] PER CURIAM:*

Emilio Garcia-Pinedo pleaded guilty without the benefit of a plea agreement to illegally reentering the country after he had been removed. The district court imposed a 48-month prison sentence, which was more than twice the high-end of the 15-

to-21-month advisory guidelines range. Garcia-Pinedo appeals, contending that the sentence is substantively unreasonable because, in his view, the court did not adequately account for certain aspects of his history and characteristics and the degree **[**2]** of the variance was too large under the totality of the circumstances. Our review is for abuse of discretion. [*United States v. Nguyen*, 854 F.3d 276, 283 \(5th Cir. 2017\)](#).

The district court explicitly stated that it took into account Garcia-Pinedo's arguments, specifically referencing his motivation for returning to the United States. However, it determined that a sentence well above the guidelines range was warranted based on the 18 U.S.C. § 3553(a) factors, especially Garcia-Pinedo's history and characteristics, the need to promote respect for the law, and to deter Garcia-Pinedo from returning to the United States. Furthermore, even where, as here, the sentence is substantially above the guidelines range, we defer to the district court's determination that the sentencing factors support it. *See id.* Though a "major deviation from the Guidelines range requires a greater justification than a minor one," [*United States v. Fraga*, 704 F.3d 432, 440 \(5th Cir. 2013\)](#), the district court here gave sufficient "individualized, case-specific reasons" to substantiate the "significant variance," [*Nguyen*, 854 F.3d at 283](#) (internal quotation marks and citation omitted). The court was particularly concerned with Garcia-Pinedo's nine previous deportations and his ten illegal reentries. It also observed that some of those reentries came shortly after deportations **[**3]** and reasoned that Garcia-Pinedo had not been deterred by his prior illegal reentry conviction.

Garcia-Pinedo has not shown that his sentence "(1) does not account for a factor **[*383]** that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors." *Id.* (internal quotation marks and citation omitted). Accordingly, the judgment is **AFFIRMED**.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: **3:16-CR-00194-L(1)**USM Number: **13440-041****Laura S. Harper**

Defendant's Attorney

EMILIO GARCIA-PINEDO**THE DEFENDANT:**

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 1 of the Indictment filed May 18, 2016.
☐	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

8:1326(a) and (b)(1)/(2) Illegal Reentry After Removal From The United States

Offense Ended

03/28/2016

Count

1

The defendant is sentenced as provided in pages 2 through 5 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 ☐ 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.

January 23, 2017

Date of Imposition of Judgment



Signature of Judge

Sam A. Lindsay, United States District Judge

Name and Title of Judge

January 25, 2017

Date

DEFENDANT: EMILIO GARCIA-PINEDO
CASE NUMBER: 3:16-CR-00194-L(1)

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Forty-eight (48) months as to Count 1.**

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ 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: EMILIO GARCIA-PINEDO
CASE NUMBER: 3:16-CR-00194-L(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **No Term of Supervised Release Imposed.**

DEFENDANT: EMILIO GARCIA-PINEDO
 CASE NUMBER: 3:16-CR-00194-L(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00

- ☐ 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.

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 Sheet 6 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: |

* 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: EMILIO GARCIA-PINEDO
CASE NUMBER: 3:16-CR-00194-L(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.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ 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) fine principal, (5) fine interest, (6) community restitution, (7) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.