

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 10, 2022

Lyle W. Cayce
Clerk

No. 21-40459

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ADOLFO GARCIA BADILLO,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:21-CR-62-1

Before DAVIS, ELROD, and HAYNES, *Circuit Judges.*

PER CURIAM:

Adolfo Garcia Badillo pleaded guilty to illegal reentry and was sentenced to 36 months in prison followed by three years of supervised release. The judgment contains a special condition of supervised release requiring that Badillo be surrendered to immigration officials for deportation proceedings after his release from confinement, and that if officials decline to take custody of Badillo, he immediately depart the United States and return to Mexico. Badillo argues that the district court plainly erred when it imposed the special condition requiring him to “self-deport” because it is not reasonably related to the pertinent factors set forth in 18 U.S.C. § 3553(a)

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and that the district court lacked authority to order that he depart the United States. *See* § 18 U.S.C. § 3583; *see also United States v. Quaye*, 57 F.3d 447, 449-51 (5th Cir. 1995). The Government has conceded error under *Quaye* and has moved to remand the case for reformation of the judgment to excise the challenged condition.

The district court lacked authority under § 3583(d) to order Badillo to self-deport as a condition of supervised release. *See Quaye*, 57 F.3d at 449-51. Accordingly, the judgment of the district court is VACATED in part, and the case is REMANDED for the entry of a new written judgment without the special condition requiring that Badillo depart the United States. The judgment of the district court is otherwise AFFIRMED. The Government's motions to remand the case and to withdraw its appellee's brief are GRANTED.