

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 3, 2026

Lyle W. Cayce
Clerk

No. 25-10449

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDGAR ALEJANDRO ESCOBEDO-GOMEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:21-CR-531-1

Before WIENER, HAYNES, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Edgar Alejandro Escobedo-Gomez was indicted for illegal reentry by an alien following a prior removal. Escobedo-Gomez moved to dismiss the indictment, arguing that the prior removal was invalid. The district court denied the motion to dismiss and, following a jury trial, Escobedo-Gomez was convicted and sentenced. On appeal, Escobedo-Gomez challenges the denial of his motion to dismiss and argues that the district court erred when

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

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admitting evidence and during the questioning of witnesses and sentencing. As we explain below, we AFFIRM.¹

I. Background

Escobedo-Gomez first entered the United States unlawfully some time prior to February 2005. Between 2005 and 2008, he was arrested for three misdemeanor offenses, including assault and driving under the influence, but no immigration action was taken at that time.

In August 2018, Escobedo-Gomez was arrested in Coweta County, Georgia, for driving without a valid license. Immigration and Customs Enforcement (“ICE”) officials approached him at the Coweta County Jail and issued a detainer. In September 2018, an immigration judge granted Escobedo-Gomez’s application for voluntary departure. Several days later, however, he was arrested for assault family violence in Dallas, Texas. He pleaded guilty to that offense, was sentenced to 90 days’ imprisonment, and voluntarily departed the United States in January 2019.

On June 15, 2019, Escobedo-Gomez again entered this country unlawfully. Three days later, Border Patrol agents observed and questioned Escobedo-Gomez in Texas and processed him for expedited removal pursuant to § 235(b)(1) of the Immigration and Nationality Act (“INA”), which is codified at 8 U.S.C. § 1225(b)(1). The expedited removal order was based on the determination that Escobedo-Gomez was inadmissible under § 212(a)(7)(A)(i)(I) of the INA, codified at 8 U.S.C. § 1182 (a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, was “not in possession of a valid unexpired” immigration document.

¹ Judge Graves concurs in the judgment only.

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Escobedo-Gomez pleaded guilty to the offense of improper entry by an alien concerning his June 2019 entry, and he was sentenced to 160 days' imprisonment. When he was released from the custody of the Bureau of Prisons in November 2019, he was served with the June 2019 order of expedited removal, and he was removed from the United States.

In August 2021, Escobedo-Gomez was arrested in Dallas for aggravated sexual assault of a child and was approached by ICE agents the same day as his arrest. The agents issued a detainer. Escobedo-Gomez later pleaded guilty to that state offense and was sentenced to nine years' imprisonment.

In October 2021, Escobedo-Gomez was indicted for illegal reentry by an alien following previous deportation in violation of 8 U.S.C. § 1326(a). Escobedo-Gomez moved to dismiss the indictment, contending that the June 2019 removal order—and his November 2019 removal based on that order—could not serve as the predicate for the illegal-reentry offense because he was wrongly placed in expedited removal proceedings.

The district court denied the motion to dismiss the indictment, determining that, under the INA, Escobedo-Gomez was deemed an applicant for admission when he physically entered the United States on June 15, 2019. It thus concluded that Escobedo-Gomez had “submitted a constructive ‘application for admission’ by engaging in the conduct,” i.e., physically entering the United States, “that renders an alien an ‘applicant for admission.’” Thus, Escobedo-Gomez was eligible for expedited removal proceedings because, at the time of his constructive application for admission, he was inadmissible as an alien who did not have the required entry documents.

Following a three-day jury trial, a jury found Escobedo-Gomez guilty of illegal reentry. The district court sentenced Escobedo-Gomez within the

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U.S. Sentencing Guidelines range to 24 months' imprisonment, to be followed by one year of supervised release. Escobedo-Gomez promptly appealed.

II. Jurisdiction

The district court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction over this appeal under 28 U.S.C. § 1291 because the district court entered a final judgment. We also have jurisdiction under 18 U.S.C. § 3742(a) to review Escobedo-Gomez's sentence.

III. Discussion

On appeal, Escobedo-Gomez argues that: (A) the district court erred in denying his motion to dismiss the October 2021 indictment; (B) the district court erred in admitting numerous exhibits; (C) he was denied a fair trial due to the district court's questioning of the Government's witnesses; and (D) the district court impermissibly considered the fact that he took the case to trial in determining his sentence. We address each argument in turn.

A. Denial of Motion to Dismiss the Indictment

To start, Escobedo-Gomez argues that the district court should have dismissed the October 2021 indictment for illegal reentry because the June 2019 order that his November 2019 removal was based on was invalid.

We "review[] the district court's denial of a motion to dismiss an indictment de novo." *United States v. Hernandez Velasquez*, 120 F.4th 1294, 1296 (5th Cir. 2024).

An alien indicted for illegal reentry may collaterally attack the underlying removal order if he shows that (1) "[he] exhausted any administrative remedies that may have been available to seek relief against the order; (2) the deportation proceedings at which the order was issued improperly deprived [him] of the opportunity for judicial review; and (3) the

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entry of the order was fundamentally unfair.” 8 U.S.C. § 1326(d); *see also United States v. Palomar-Santiago*, 593 U.S. 321, 324–25 (2021) (quoting 8 U.S.C. § 1326(d)). If an alien successfully makes this showing, he must also show actual prejudice, i.e., “a reasonable likelihood that but for the errors complained of [he] would not have been deported.” *United States v. Benitez-Villafuerte*, 186 F.3d 651, 659 (5th Cir. 1999) (citation omitted). The Government focused on disagreeing with Escobedo-Gomez’s view of § 1326(d)(3).

Attempting to satisfy § 1326(d)(3), Escobedo-Gomez asserts that the June 2019 expedited removal order was fundamentally unfair. While 8 U.S.C. § 1225 allows for the expedited removal of “inadmissible” aliens, Escobedo-Gomez argues he was not “inadmissible” under § 1182(a)(7), which states, in relevant part, that “any immigrant at the time of application for admission . . . who is not in possession of a valid unexpired” entry document “is inadmissible.” 8 U.S.C. § 1182(a)(7)(A)(i)(I). Escobedo-Gomez asserts that this does not apply to him because, as evidenced by his statements to the Border Patrol agents who interviewed him, he had never applied for admission to the United States. We disagree.

Under the INA, an “applicant for admission” is “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .).” *Id.* § 1225(a)(1). Indeed, we have held that “an applicant for admission includes aliens present in the United States who have not been admitted.” *Crane v. Johnson*, 783 F.3d 244, 249 (5th Cir. 2015) (citation modified). Escobedo-Gomez was clearly not admitted. Thus, the June 2019 expedited removal order was valid, and the district court did not err in denying Escobedo-Gomez’s motion to dismiss the October 2021 indictment.

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B. Admission of Exhibits

Next, Escobedo-Gomez argues that the district court erred in admitting numerous exhibits over his objections, asserting they contained inadmissible hearsay and their admission violated the Confrontation Clause.

Concerning any objected-to admission, we do not enter into a complete hearsay or Confrontation Clause analysis because, even if the district court violated the Confrontation Clause or abused its discretion in admitting hearsay, such errors were harmless.

“An evidentiary error is harmless if it would not have a substantial impact on the jury’s verdict.” *United States v. Williams*, 83 F.4th 994, 996 (5th Cir. 2023) (citation modified). Here, no harmful error occurred with the admission of any of the complained-of exhibits challenged because our review of the record reveals that there was ample other evidence for a jury to convict Escobedo-Gomez, and that other evidence was “overwhelming.” *Id.* at 998.

For the same reason, there certainly is no *plain* error concerning the admission of any exhibit to which Escobedo-Gomez did not object. Under the plain error standard, “there must be an error or defect” that is “clear or obvious,” and “affected the appellant’s substantial rights” (i.e., that “affected the outcome of the district court proceedings”). *Puckett v. United States*, 556 U.S. 129, 135 (2009). Then, if those three prongs are satisfied, we have the “*discretion* to remedy the error.” *Id.*

But just as there was no harmful error, as explained above, the admissions did not “affect[] the outcome of the district court proceedings.” *Id.* As such, any error did not affect Escobedo-Gomez’s “substantial rights,” and no plain error occurred.

Therefore, we find no reversible error concerning the admission of evidence.

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C. District Court’s Questioning of Government Witnesses

Next, Escobedo-Gomez claims that the district court’s questioning of trial witnesses shows that the court was a “non-neutral tribunal,” thus violating due process.

A district judge may examine a witness under Federal Rule of Evidence 614(b) “for the purpose of aiding the jury in understanding the testimony.” *United States v. Sanex*, 134 F.3d 697, 702 (5th Cir. 1998) (per curiam). The district court “may question witnesses and elicit facts not yet adduced or clarify those previously presented.” *Id.* at 701 (citation omitted). In assessing claims such as Escobedo-Gomez’s, we review the record “to determine whether the judge’s behavior was so prejudicial that it denied the defendant a fair, as opposed to a perfect, trial.” *United States v. Bermea*, 30 F.3d 1539, 1569 (5th Cir. 1994). We do not reverse unless “the district judge’s actions, viewed as a whole, [amounted] to an intervention that could have led the jury to a predisposition of guilt by improperly confusing the functions of judge and prosecutor.” *Id.*

The instances Escobedo-Gomez points to include interjections by the district court such as asking the Government’s witness “where” Escobedo-Gomez “did not have legal status,” and did “not have status to remain.” Other instances include the district court asking for clarification of specific immigration terms and protocol; asking to be pointed to a portion of an exhibit the witness was referring to, as well as asking for clarification of the meaning; and uttering common phrases of understanding such as “uh-huh” and “I see.”

In reviewing the exchanges between the district court and Government witnesses that Escobedo-Gomez points to, we conclude that the court merely interjected to clarify witness testimony. The interjections were *not*, as Escobedo-Gomez claims, attempts to “mak[e] a repeated point,”

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“guide [the Government witnesses] further and further down a path to a guilty verdict,” “bolster,” “highlight,” or “endorse[]” the Government’s witnesses’ testimony, or “reinforce the effect of the testimony from the [G]overnment’s witnesses.” We conclude that the district court’s intervention did not “improperly confus[e] the function of judge and prosecutor.” *Id.*

Thus, the district court did not err during the questioning of the Government’s witnesses.

D. Sentencing Considerations

Last, Escobedo-Gomez argues that when determining his sentence, the district court improperly considered the fact that he chose to go to trial.

Escobedo-Gomez acknowledges that his sentence was within the U.S. Sentencing Guidelines range, which makes it presumptively reasonable. *United States v. Brumfield*, 89 F.4th 506, 524 (5th Cir. 2023). “We review the substantive reasonableness of the sentence under an abuse-of-discretion standard.” *United States v. Simpson*, 796 F.3d 548, 557 (5th Cir. 2019).

While the district judge mentioned that Escobedo-Gomez held a trial, the judge clarified that the fact Escobedo-Gomez went to trial did “not enter [the court’s] decision to sentence him.”

Not only that, but the district court provided ample reasoning for its decision to impose the part of the sentence Escobedo-Gomez takes issue with. While both parties requested a 24-month sentence, the district court denied Escobedo-Gomez’s request that the sentence run concurrently with his nine-year state sentence for aggravated sexual assault of a child given all he had done.

We conclude that the district court did not improperly rely on Escobedo-Gomez’s decision to go to trial in deciding his sentence.

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IV. Conclusion

Accordingly, we AFFIRM.