

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 11, 2026

Lyle W. Cayce
Clerk

No. 25-20241

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSUE RODRIGUEZ-RODRIGUEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CR-457-1

Before RICHMAN, HIGGINSON, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Defendant-Appellant Josue Rodriguez-Rodriguez (“Rodriguez”) pleaded guilty to illegal reentry to the United States after having been convicted of an aggravated felony offense in violation of 8 U.S.C. §§ 1326(a), (b). At his sentencing hearing, Rodriguez did not file any objections to the United States Probation Office’s Presentence Report (“PSR”). He nevertheless argues plain error upon being sentenced under 8 U.S.C.

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

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§ 1326(b)(2). Section 1326(b)(2) authorizes a maximum 20-year term if the removal was “subsequent to a conviction for commission of an aggravated felony.” 8 U.S.C. § 1326(b)(2). Rodriguez claims that none of his pre-conviction felonies amount to an aggravated felony under § 1326(b). The Government acknowledges that there are no documents in the record that support the validity of the enhanced penalty range and seeks to supplement the record. We VACATE the judgment of the district court and REMAND for consideration of any additional evidence or documentation necessary.

I

Rodriguez’s PSR reveals that, between 2000 and 2008, he was charged with illegal entry into the United States six times. In March of 2009, he was convicted of one count of aggravated assault family violence and two counts of third-degree cruelty to children. Following that conviction, in May of 2014, Rodriguez was again convicted of illegal reentry into the United States, this time under the § 1326(b) enhancement.

At Rodriguez’s sentencing for the instant offense, he was again subject to the § 1326(b) enhancement for reentering the United States following a conviction for an aggravated felony. At his sentencing, neither the government nor Rodriguez filed objections to the PSR, which noted his charge was subject to the aggravated felony enhancement.

II

Because no objections were filed by Rodriguez, we review his claim for plain error. *See United States v. Medina-Anicacio*, 325 F.3d 638, 643 (5th Cir. 2003) (“Arguments raised for the first time on appeal are subject to the plain error standard.”). To prevail under plain error, a defendant must show (1) an error (2) that is clear and obvious (3) that affected his substantial rights. *See Molina-Martinez v. United States*, 578 U.S. 189, 194 (2016).

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III

As to the error prong, the district court did not specify which prior conviction triggered application of § 1326(b)(2). The Government acknowledges there are no “sufficient documents” in the record that address the “validity of the enhanced penalty range.” The Government moved to provide documents to support the enhancement to our court in the first instance. Rodriguez opposed this motion. Even considering the supplemented information, our court would have to hypothesize which conviction triggered the enhancement to determine whether it was plain error.

Our court is a court of review, not first view. *See Montano v. Texas*, 867 F.3d 540, 546 (5th Cir. 2017). We therefore vacate Rodriguez’s conviction and remand for the district court to consider the supplemented record and to amend the judgment to reflect which conviction or convictions triggered application of § 1326(b)(2), should the district court re-impose the enhancement. Although we have found the government’s documentation of Rodriguez’s prior convictions insufficient at this stage, we “intimate no opinion as to the merits” of the application of the enhanced penalty range to this case should it be presented to this court in the future. *United States v. Medina-Torres*, 703 F.3d 770, 780 (5th Cir. 2012).

IV

Because there was insufficient evidence before the district court to support the § 1326(b)(2) enhancement, we VACATE the district court’s judgment and REMAND for re-sentencing considering the supplemented record.