United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 28, 2026
Thomas B. Plunkett, III
Clerk

No. 25-20488

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

VALENTIN MARTINEZ-ORNELAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:24-CR-8-1

Before JONES, SOUTHWICK, and DUNCAN, *Circuit Judges*.

PER CURIAM:[*]

Valentin Martinez-Ornelas challenges a condition of supervised release imposed on him as part of his sentence for dealing methamphetamine. He asserts that the district court's oral pronouncement of the condition conflicts with its written judgment. Despite the district court's late dismissal of an unadjudicated Count from Martinez-Ornelas's indictment, this court has appellate jurisdiction. Bound by this court's recent decision in *United*

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

States v. Lezama-Ramirez, 173 F.4th 191 (5th Cir. 2026), we must hold that the district court's oral pronouncement conflicted with its written judgment on one point. We therefore VACATE special condition 2 and REMAND with instructions to conform the written judgment to the court's oral pronouncement.

Background

Martinez-Ornelas was charged with conspiracy to possess 500 grams or more of methamphetamine mixture with intent to distribute, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)(viii) (Count One), and two counts of possession of 500 grams or more of methamphetamine mixture with intent to distribute, in violation of §§ 841(a)(1) and (b)(1)(A)(viii) (Counts Two and Three). Martinez-Ornelas pled guilty to Counts One and Two without a written plea agreement. The district court sentenced Martinez-Ornelas to 180 months of imprisonment, followed by five years of supervised release.[1]

The written judgment imposed Special Conditions of Supervision that required him to report "immediately" to Immigration and Customs Enforcement ("ICE") and "follow all their instructions… until any deportation proceedings are completed." It further stated, "[i]f you are ordered deported…, you must remain outside the United States unless legally authorized to reenter. If you reenter the United States, you must

[1] At the sentencing hearing, the district court also revoked a previously imposed term of supervised release and sentenced Martinez-Ornelas to twenty-four months of imprisonment, six months of which were to run consecutive to the sentence for the new offense.

report to the nearest probation office within 72 hours after you return." Despite delays, the parties agree Martinez-Ornelas's appeal is timely.[2]

Throughout the guilty plea and sentencing processes, the parties and the district court failed to address the disposition of Count Three. The government eventually moved to dismiss the charge without prejudice in March 2026, after this appeal was underway. The district court granted the motion and dismissed Count Three without prejudice.

Appellate Jurisdiction

"This court must examine the basis of its jurisdiction, on its own motion, if necessary," before considering the merits of an appeal. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). In criminal cases, the final judgment rule "prohibits appellate review until conviction and imposition of sentence." *Flanagan v. United States*, 465 U.S. 259, 263 (1984). This court lacks jurisdiction when a criminal defendant has been convicted on multiple counts but not sentenced for every conviction. *United States v. Wilson*, 440 F.2d 1103, 1104–05 (5th Cir. 1971).

Martinez-Ornelas has been convicted and sentenced on two of three Counts, but Count Three, since dismissed, was unadjudicated when he filed his appeal. This court has not yet decided whether it has jurisdiction in these circumstances.

Our sister circuits have taken different approaches. The First and Seventh Circuits have held that they lack jurisdiction in cases with unresolved counts. *United States v. Luciano-Mosquera*, 63 F.3d 1142, 1148 n.2 (1st Cir. 1995); *United States v. Kaufmann*, 951 F.2d 793, 795 (7th Cir. 1992);

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[2] An untimely notice of appeal in a criminal case does not deprive this court of jurisdiction. *United States v. Martinez*, 496 F.3d 387, 388–89 (5th Cir. 2007). The government forfeited timeliness as a defense by failing to assert it. *Id.*

Yockey v. Horn, 880 F.2d 945, 948 n.4 (7th Cir. 1989). Meanwhile, the Ninth Circuit has held that counts are severable, and sentences for each count can be immediately reviewed when entered, notwithstanding outstanding resolutions and sentences. *United States v. King*, 257 F.3d 1013, 1020 (9th Cir. 2001). But in both *Luciano-Mosquera* and *Yockey*, as here, the district courts later dismissed the outstanding counts. The circuit courts then exercised jurisdiction, as they determined that, pursuant to Rule 4(b)(2), the defendants' earlier filed notices of appeal would be considered filed on the date of the dismissal of the remaining counts. *See Luciano-Mosquera*, 63 F.3d at 1148 n.2; *Yockey*, 880 F.2d at 948 n.4; FED. R. APP. P. 4(b)(2).

Without deciding whether we would have had jurisdiction if the district court had not dismissed Count Three, we conclude that we have jurisdiction now because all counts are either sentenced or dismissed. It does not matter that Count Three was unadjudicated when Martinez-Ornelas first filed this appeal. The unadjudicated count is resolved, and his notice of appeal relates forward to the entry of judgment.

THE CONFLICT AT SENTENCING

"A sentencing court must pronounce conditions [of supervised release] that are discretionary under 18 U.S.C. § 3583(d)." *United States v. Diggles*, 957 F.3d 551, 563 (5th Cir. 2020). But that need not be explicit. A sentencing court pronounces supervision conditions when it orally adopts a PSR that the defendant reviewed with counsel. *United States v. Medel-Guadalupe*, 987 F.3d 424, 430 n.6 (5th Cir. 2021) ("[T]he district court expressly adopted . . . the PSR which contained the appendix. This notice was sufficient under *Diggles*."). But where a district court, at oral pronouncement, "varie[s] in its description of the conditions," defendants cannot know about that variance, and therefore cannot object until after the written judgment issues. *Lezama-Ramirez*, 173 F.4th at 195. In such

circumstances, if the written judgment imposes more burdensome restrictions or requirements, it must be conformed to the oral pronouncement. *Id.* at 195.

At sentencing, the district court stated that Martinez-Ornelas "shall not reenter the United States illegally." The Special Conditions were more complex: they contemplated his submission after release from prison to U.S. Immigration and Customs Enforcement for (likely) deportation proceedings, followed by, notably, a requirement to remain outside the United States unless "legally authorized to reenter." And then, if he were to reenter, Martinez-Ornelas must report to the nearest probation office within 72 hours.

Lezama-Ramirez is directly on point factually. In that case, this court held, there was a discrepancy between (a) an oral pronouncement that "if [defendant] is deported," he cannot "re-enter the United States without the written permission of the Secretary of Homeland Security," and (b) an additional duty in the written special condition to report to the nearest probation office within 24 hours. *Id*. at 195. The government there conceded that "the reporting requirement imposes an additional burden." *Id.*

No doubt the experienced district court simply compressed the Special Conditions into an order not to reenter the United States illegally. *See, e.g.*, *United States v. Grogan,* 977 F.3d 348, 353–54 (5th Cir. 2020) (holding, in reference to other written conditions of supervised release, that a court's oral "shorthand reference" to such conditions does not create a conflict). But according to the interpretation in *Lezama-Ramirez,* the discrepancy here implicates the principle that where written judgments and oral pronouncements conflict, the district court must amend the written judgment to conform to the oral pronouncement. *United States v. Currier*, 160 F.4th 656, 658 (5th Cir. 2025); *United States v. Chicol-Najarro*, 147 F.4th

531, 533–34 (5th Cir. 2025). Because the written Special Conditions "imposed an additional burden," the court's oral pronouncement controls and the written judgment must be amended.

We VACATE the written Special Conditions of Supervised Release only as to the requirement that if Martinez-Ornelas reenters the United States, he must report within 72 hours to the nearest probation office; and we REMAND to the district court to so conform the judgment.