

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10552
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS GUTIERREZ-HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:25-cr-00304-SDG-LRS-1

Before WILLIAM PRYOR, Chief Judge, and JILL PRYOR and BRANCH,
Circuit Judges.

PER CURIAM:

Carlos Gutierrez-Hernandez appeals his 56-month prison sentence for illegal reentry after having previously been deported

or removed from the United States. 8 U.S.C. § 1326(a), (b)(1). We affirm.

Gutierrez-Hernandez pleaded guilty to illegal reentry after having previously been deported or removed from the United States. *Id.* A probation officer prepared a presentence investigation report that calculated a base offense level of 8, U.S.S.G. § 2L1.2, added 4 levels because Gutierrez-Hernandez committed the instant offense after sustaining a conviction for a felony that is an illegal reentry offense, *id.* § 2L1.2(b)(1), and added 8 levels because, before Gutierrez-Hernandez was ordered removed from the United States for the first time, he was convicted for burglary and sentenced to two or more years, *id.* § 2L1.2(b)(2). The report then subtracted 3 levels for acceptance of responsibility, *id.* § 3E1.1(a)-(b), resulting in a total offense level of 17. The report calculated a criminal history category of V based on 11 criminal history points, resulting in a guideline range of imprisonment of 46 to 57 months with a statutory maximum of 10 years.

At sentencing, Gutierrez-Hernandez did not object to the guideline calculation and argued for a sentence of time served. The district court sentenced him to 56 months of imprisonment followed by 3 years of supervised release based on Gutierrez-Hernandez's history as a repeat offender of illegal reentry, and commented that it had "never seen . . . a defendant who has served as much time of incarceration for illegal reentry as Mr. Gutierrez-Hernandez and yet finds himself here again." It stated that his "immigration history and criminal history [were] aggravating factors," and

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that it did not know “that there would ever be a case that would warrant a sentence close to that statutory maximum that had more aggravating circumstances than this one given the repeat offenses of Mr. Gutierrez-Hernandez and seemingly undeterred by very significant times of incarceration for this very offense.”

Gutierrez-Hernandez argues that his sentence is unreasonable because the district court gave undue weight to the aggravating factors of his case without addressing mitigating factors. But “the weight given to each factor is committed to the sound discretion of the district court.” *United States v. Butler*, 39 F.4th 1349, 1355 (11th Cir. 2022). These factors include the need to reflect the seriousness of the offense, deter criminal conduct, protect the public from the defendant’s future crimes, and provide the defendant with needed training or treatment. 18 U.S.C. § 3553(a)(2)(A)-(D). The court must also consider the offense’s “nature and circumstances,” the defendant’s “history and characteristics,” the “kinds of sentences available,” the applicable guideline range, Sentencing Commission policy statements, “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,” and the need to provide restitution to the victims. *Id.* § 3553(a)(1), (3)-(7). The district court considered these factors and found that a guideline sentence of 56 months of imprisonment, which was also well below the statutory maximum, was appropriate. *See United States v. Hayden*, 119 F.4th 832, 837 (11th Cir. 2024) (holding that sentences well below the statutory maximum are presumed to be reasonable). Based on this record,

we are not “left with the definite and firm conviction that the district court committed a clear error of judgment” in sentencing Gutierrez-Hernandez to 56 months of imprisonment. *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc).

AFFIRMED.