

18-8743
No.

IN THE SUPREME COURT OF THE UNITED STATES

ARTURO TORRES-CABRERA,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

ORIGINAL

Supreme Court, U.S.
FILED

APR 04 2019

OFFICE OF THE CLERK

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

JASON D. HAWKINS
Federal Public Defender
NORTHERN DISTRICT OF TEXAS

PETER FLEURY
Counsel of Record
ASSISTANT FEDERAL PUBLIC
DEFENDER
819 TAYLOR ST., RM 9A10
FORT WORTH, TX. 76102
(817) 978-2753

QUESTIONS PRESENTED

- I. Whether all facts – including the fact of a prior conviction – that increase a defendant's statutory maximum must be pleaded in the indictment and either admitted by the defendant or proven to a jury beyond a reasonable doubt?

Subsidiary questions:

- a. Did the district court err in sentencing Torres-Cabrera to a term of imprisonment greater than two years for a violation of 8 U.S.C. § 1326?
- b. Are the statutory enhancement provisions in 8 U.S.C. § 1326(b) unconstitutional because Congress unequivocally intended the enhancements to be sentencing factors, not elements of separate offenses; but under this Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), such a scheme is unconstitutional?

PARTIES

Arturo Torres-Cabrera is the Petitioner; he was the defendant-appellant below.

The United States of America is the Respondent; it was the plaintiff-appellee below.

TABLE OF CONTENTS

Question Presented	ii
Parties.....	iii
Table of Contents.....	iv
Index to Appendices.....	v
Table of Authorities	vi
Opinions Below.....	1
Jurisdictional Statement.....	1
Constitutional and Statutory Provisions Involved	1
Statement of the Case	4
Reasons for Granting the Writ.....	5
This Court should use this case to answer the reoccurring, important question whether all facts – including the fact of a prior conviction – that increase a defendant's statutory maximum must be pleaded in the indictment and either admitted by the defendant or proven to a jury beyond a reasonable doubt?	5
Conclusion	10

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the
Northern District of Texas

TABLE OF AUTHORITIES

Cases

<i>Alleyne v. United States</i> , 133 S. Ct. 2151 (2013)	5, 6, 7, 8
<i>Almendarez-Torres v. United States</i> , 523 U.S. 224 (1998)	<i>passim</i>
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	<i>passim</i>
<i>Blakely v. Washington</i> , 542 U.S. 296 (2004)	6
<i>Booth v. Maryland</i> , 482 U.S. 496 (1987)	9
<i>Cunningham v. California</i> , 549 U.S. 270 (2007)	8
<i>Descamps v. United States</i> , 133 S. Ct. 2276 (2013)	5
<i>Dretke v. Haley</i> , 541 U.S. 386 (2004)	6
<i>Grady v. Corbin</i> , 495 U.S. 508 (1990)	9
<i>James v. United States</i> , 550 U.S. 192 (2007)	6
<i>Nijhawan v. Holder</i> , 129 S. Ct. 2294 (2009)	6
<i>Payne v. Tennessee</i> , 501 U.S. 808 (1991)	9
<i>Rangel-Reyes v. United States</i> , 547 U.S. 1200 (2006)	6
<i>Shepard v. United States</i> , 544 U.S. 13 (2005)	4, 5, 6, 8
<i>South Carolina v. Gathers</i> , 490 U.S. 805 (1989)	9
<i>United States v. Dixon</i> , 509 U.S. 688 (1993)	9

Statutes

8 U.S.C. § 1326	1, 4, 10
8 U.S.C. § 1326(a)	10
8 U.S.C. § 1326(b)	4, 5, 6, 9
28 U.S.C. § 1254(1)	1

Rules

Sup. Ct. R 13.1	1
-----------------------	---

Miscellaneous

4 W. Blackstone, <i>Commentaries on the Laws of England</i> 343 (1769)	6
1 J. Bishop, <i>Criminal Procedure</i> § 87, p 55 (2d ed. 1872)	6
J. Archbold, <i>Pleading and Evidence in Criminal Cases</i> 44 (15th ed. 1862)	6

United States Constitution

U.S. Const. amend. V	2
U.S. Const. amend. VI	3

PETITION FOR A WRIT OF CERTIORARI

Petitioner Arturo Torres-Cabrera respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Fifth Circuit is captioned as *United States v. Arturo Torres-Cabrera*, No. 18-11031, and is provided in the Appendix to the Petition. [Appx. A].

JURISDICTIONAL STATEMENT

The instant Petition is filed within 90 days of an opinion affirming the judgment, which was entered on March 21, 2019. See SUP. CT. R. 13.1. This Court's jurisdiction to grant *certiorari* is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, RULES, AND STATUTES INVOLVED

8 U.S.C. § 1326 provides in part:

- (a) In general. Subject to subsection (b), any alien who
 - (1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter
 - (2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance

consent under this or any prior Act,

shall be fined under title 18, United States Code, or imprisoned not more than 2 years or both.

(b) Criminal penalties for reentry of certain removed aliens.

Notwithstanding subsection (a), in the case of any alien described in such subsection-

(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

(3) who has been excluded from the United States pursuant to section 235(c) [8 USCS § 1225(c)] because the alien was excludable under section 212(a)(3)(B) [8 USCS § 1182(a)(3)(B)] or who has been removed from the United States pursuant to the provisions of title V [8 USCS §§ 1531 et seq.], and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.]; or

(4) who was removed from the United States pursuant to section 241(a)(4)(B) [8 USCS § 1231(a)(4)(B)] who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both. For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

A. Trial Court Proceedings

Petitioner was charged in a one-count indictment with illegal re-entry after deportation, a violation of 8 U.S.C. § 1326(a) and (b)(1). The indictment alleged that “[o]n or about June 10, 2017, in the Dallas Division of the Northern District of Texas, the defendant, Arturo Torres-Cabrera, an alien, was found in the United States after having been deported and removed therefrom on or about June 19, 2016, without having received the consent of the Attorney General or the Secretary of the Department of Homeland Security, to reapply for admission since the time of the Defendant's previous deportation and removal.” There were no allegations of any of the enhancement provisions under the statute that would raise the statutory maximum above 2 years. See 8 U.S.C. § 1326.

Petitioner Arturo Torres-Cabrera pleaded guilty to this indictment. The factual resume and the admonishments at the re-arraignment noted that the maximum sentence was 10 years. The district court did not advise Torres-Cabrera that the Felony provision of 8 U.S.C. § 1326(b)(1) stated an essential element of the offense to which he was pleading guilty. The district court sentenced Mr. Torres-Cabrera to 33 months.

B. The Appeal

Petitioner appealed his sentence, arguing, that the district court's sentence exceeded the statutory maximum authorized by 8 U.S.C. § 1326(a). The court of appeals affirmed his sentence. *United States v. Torres-Cabrera*, No. 18-11031, (5th Cir., March 21, 2019). See [Appendix A].

REASONS FOR GRANTING THE WRIT

This Court should use this case to answer the reoccurring, important question whether all facts – including the fact of a prior conviction – that increase a defendant's statutory maximum must be pleaded in the indictment and either admitted by the defendant or proven to a jury beyond a reasonable doubt?

Introduction.

Petitioner was subjected to an enhanced statutory maximum under 8 U.S.C. §1326(b) because the removal charged in the indictment followed an aggravated felony conviction. Petitioner's sentence thus depends on the judge's ability to find the existence and date of a prior conviction, and to use that date to increase the statutory maximum. This power was affirmed in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), which held that the enhanced maximums of 8 U.S.C. § 1326 represent sentencing factors rather than elements of an offense, and that they may be constitutionally determined by judges rather than juries. See *Almendarez-Torres*, 523 U.S. at 244.

This Court, however, has repeatedly limited *Almendarez-Torres*. See *Alleyne v. United States*, 133 S.Ct. 2151, 2160 n.1 (2013) (characterizing *Almendarez-Torres* as a narrow exception to the general rule that all facts that increase punishment must be alleged in the indictment and proved to a jury beyond a reasonable doubt); *Descamps v. United States*, 133 S. Ct. 2276, 2295 (2013)(Thomas, J., concurring) (stating that *Almendarez-Torres* should be overturned); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (stressing that *Almendarez-Torres* represented "a narrow exception" to the prohibition on judicial fact-finding to increase a defendant's sentence); *Shepard v. United States*, 544 U.S. 13 (2005) (Souter, J., controlling plurality opinion) ("While the disputed fact here can be described as a fact about a prior conviction, it is too far removed from the conclusive significance of a prior

judicial record, and too much like the findings subject to *Jones* and *Apprendi*, to say that *Almendarez-Torres* clearly authorizes a judge to resolve the dispute."); *Dretke v. Haley*, 541 U.S. 386, 395-396 (2004) (concluding that the application of *Almendarez-Torres* to the sequence of a defendant's prior convictions represented a difficult constitutional question to be avoided if possible); *Nijhawan v. Holder*, 129 S.Ct. 2294, 2302 (2009) (agreeing with the Solicitor General that the loss amount of a prior offense would represent an element of an 8 U.S.C. §1326(b) offense, to the extent that it boosted the defendant's statutory maximum).

Further, any number of opinions, some authored by Justices among the *Almendarez-Torres* majority, have expressed doubt about whether it was correctly decided. See *Apprendi*, 530 U.S. at 490; *Haley*, 541 U.S. at 395-396; *Shepard*, 544 U.S. at 26 & n.5 (Souter, J., controlling plurality opinion); *Shepard*, 544 U.S. at 26-28 (Thomas, J., concurring); *Rangel-Reyes v. United States*, 547 U.S. 1200, 1201(2006)(Stevens, J., concurring in denial of certiorari); *Rangel-Reyes*, 547 U.S. at 1202-03 (Thomas, J., dissenting from denial of certiorari); *James v. United States*, 550 U.S. 192, 231-232 (2007)(Thomas, J., dissenting). And this Court has also repeatedly cited authorities as exemplary of the original meaning of the constitution that do not recognize a distinction between prior convictions and facts about the instant offense. See *Blakely v. Washington*, 542 U.S. 296, 301-302 (2004) (quoting 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769), 1 J. Bishop, *Criminal Procedure* § 87, p 55 (2d ed. 1872)); *Apprendi*, 530 U.S. at 478-479 (quoting J. Archbold, *Pleading and Evidence in Criminal Cases* 44 (15th ed. 1862), 4 Blackstone, 369-370).

In *Alleyne*, this Court applied *Apprendi*'s rule to mandatory minimum sentences, holding that any fact that produces a higher sentencing range—not just a sentence above the mandatory maximum—must be proved to a jury beyond a reasonable doubt. 133 S. Ct. at 2162-63. In its

opinion, the Court apparently recognized that *Almendarez-Torres*'s holding remains subject to Fifth and Sixth Amendment attack. *Alleyne* characterized *Almendarez-Torres* as a "narrow exception to the general rule" that all facts that increase punishment must be alleged in the indictment and proved to a jury beyond a reasonable doubt. *Id.* at 2160 n.1. But because the parties in *Alleyne* did not challenge *Almendarez-Torres*, this Court said that it would "not revisit it for purposes of [its] decision today." *Id.*

The Court's reasoning nevertheless demonstrates that *Almendarez-Torres*'s recidivism exception should be overturned. *Alleyne* traced the treatment of the relationship between crime and punishment, beginning in the Eighteenth Century, repeatedly noting how "[the] linkage of facts with particular sentence ranges . . . reflects the intimate connection between crime and punishment." *Id.* at 2159 ("[i]f a fact was by law essential to the penalty, it was an element of the offense"); *see id.* (historically, crimes were defined as "the whole of the wrong to which the law affixes [] punishment ... include[ing] any fact that annexes a higher degree of punishment") (internal quotation marks and citations omitted); *id.* at 2160 ("the indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted") (internal quotation marks and citation omitted). This Court concluded that, because "the whole of the" crime and its punishment cannot be separated, the elements of a crime must include any facts that increase the penalty. The Court recognized no limitations or exceptions to this principle.

Alleyne's emphasis that the elements of a crime include the "whole" of the facts for which a defendant is punished seriously undercuts the view, expressed in *Almendarez-Torres*, that recidivism is different from other sentencing facts. *See Almendarez-Torres*, 523 U.S. at 243–44; *see also Apprendi*, 530 U.S. at 490 ("Other than the fact of a prior conviction, any fact that increases the penalty for a

crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.") *Apprendi* tried to explain this difference by pointing out that, unlike other facts, recidivism "does not relate to the commission of the offense' itself[.]" 530 U.S. at 496 (quoting *Almendarez-Torres*, 523 U.S. at 230). But this Court did not appear committed to that distinction; it acknowledged that *Almendarez-Torres* might have been "incorrectly decided." *Id.* at 489; *see also* *Shepard v. United States* 544 U.S. 13, 26 n.5 (2005) (acknowledging that Court's holding in that case undermined *Almendarez-Torres*); *Cunningham v. California*, 549 U.S. 270, 291 n.14 (2007) (rejecting invitation to distinguish between "facts concerning the offense, where *Apprendi* would apply, and facts [like recidivism] concerning the offender, where it would not," because "*Apprendi* itself ... leaves no room for the bifurcated approach").

Three concurring justices in *Alleyne* provide additional reason to believe that the time is ripe to revisit *Almendarez-Torres*. See *Alleyne*, 133 S. Ct. at 2164 (Sotomayor, Ginsburg, Kagan, J.J., concurring). Those justices noted that the viability of the Sixth Amendment principle set forth in *Apprendi* was initially subject to some doubt, and some justices believed the Court "might retreat" from it. *Id.* at 2165. Instead, *Apprendi*'s rule "has become even more firmly rooted in the Court's Sixth Amendment jurisprudence." *Id.* Reversal of precedent is warranted when "the reasoning of [that precedent] has been thoroughly undermined by intervening decisions." *Id.* at 2166.

The validity of *Almendarez-Torres* is accordingly subject to reasonable doubt. If *Almendarez-Torres* is overruled in another case, the result will obviously undermine the use of Petitioner's prior conviction to increase his statutory maximum. Indeed, any limitation on the scope of this decision in another case will undercut the decision below. Petitioner's sentence depends on the district court's ability to find not merely that he was previously convicted, but that the date of his prior

conviction preceded the deportation admitted by the plea of guilty. See 8 U.S.C. §1326(b) (requiring that the defendant's prior felony conviction precede his removal).

Stare decisis should be not a bar to this Court's decision to overrule *Almendarez-Torres*. As this Court noted in United States v. Dixon, 509 U.S. 688, 704-13 (1993), as it overruled the decision rendered only three years before in *Grady v. Corbin*, 495 U.S. 508 (1990):

... Although *stare decisis* is the "preferred course" in constitutional adjudication, "when governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.'"

Dixon, 509 U.S. at 712 (citations omitted). In both *Grady v. Corbin* and *Almendarez-Torres*, the initial opinion was rendered by a sharply divided Court with four dissenters from the five member majority. In both cases the dissent argued that the majority opinion was contrary to the historical understanding of the issue and represented a sharp break with that past.

Likewise, in *Payne v. Tennessee*, 501 U.S. 808, 827-30 (1991), the Court, citing the same principle, overruled its prior decisions in *Booth v. Maryland*, 482 U.S. 496 (1987), and *South Carolina v. Gathers*, 490 U.S. 805 (1989). The Court in *Payne* noted that "Booth and *Gathers* were decided by the narrowest of margins, over spirited dissents challenging the basic underpinnings of those decisions." *Id.* at 828-29.

Almendarez-Torres, like the overruled decisions in *Grady v. Corbin*, *Booth*, and *Gathers*, was decided by the narrowest of margins, over the spirited dissent of Justice Scalia challenging the basic underpinnings of the majority's decision.

Because it appears that a majority of the Court now recognizes that the majority opinion in *Almendarez-Torres* was badly reasoned, and that the case was wrongly decided, this petition should be granted to reconsider that decision. If this Court were to do so, it would require this Court to vacate

Torres-Cabrera's sentence of 33 months imprisonment and to remand for resentencing under 8 U.S.C. § 1326(a), which provides for a statutory maximum sentence of two years imprisonment. This Court has held that Congress unequivocally intended the enhancement provisions of 8 U.S.C. § 1326 to be sentencing factors, not elements. *See Almendarez-Torres*, 523 U.S. at 235. Such a scheme is unconstitutional. In the alternative, should this court determine the statute is constitutional but that the sentencing enhancements must be proven to a jury beyond a reasonable doubt, a remand is still necessary, as the plea was involuntary under these circumstances.

If this Court were to determine that the Constitution limits Petitioner's statutory range of imprisonment to not more than two years, then clearly such constitutional error substantially prejudiced Petitioner as evidenced by his 33 months sentence.

Conclusion

Petitioner respectfully prays that this Honorable Court grant *certiorari*, and reverse the judgment below, and/or vacate the judgment and remand for reconsideration in light of any relevant forthcoming.

Respectfully submitted April 4, 2019.

/s/ PETER FLEURY
PETER FLEURY

Kevin J. P. f.
Counsel of Record
FEDERAL PUBLIC DEFENDER'S OFFICE
NORTHERN DISTRICT OF TEXAS
819 TAYLOR ST., STE. 9A10
FORT WORTH, TEXAS 76202
817-978-2753

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ARTURO TORRES-CABRERA,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

APPENDIX

JASON D. HAWKINS
Federal Public Defender
NORTHERN DISTRICT OF TEXAS

PETER FLEURY
Counsel of Record
ASSISTANT FEDERAL PUBLIC
DEFENDER
819 TAYLOR ST., RM 9A10
FORT WORTH, TX. 76102
(817) 978-2753

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-11031
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
March 21, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARTURO TORRES-CABRERA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-627-1

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:*

Arturo Torres-Cabrera appeals his conviction for illegal reentry after deportation and his sentence of 33 months of imprisonment and two years of supervised release. He argues that his sentence exceeded the statutory maximum because the enhanced penalty provision of 8 U.S.C. § 1326(b)(1) is unconstitutional. He also asserts that his guilty plea was involuntary because he was not admonished that his prior felony conviction could only be used to

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

enhance his sentence under § 1326(b)(1) if it was submitted to a jury and proved beyond a reasonable doubt.

However, Torres-Cabrera has filed an unopposed motion for summary disposition and a letter brief conceding that these issues are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). He explains that he has raised the issues only to preserve them for possible further review. Accordingly, because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Torres-Cabrera's motion is GRANTED, and the district court's judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ARTURO TORRES-CABRERACase Number: **3:17-CR-00627-L(1)**USM Number: **33830-479****Gabriela Vega**

Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 1 of the Indictment filed December 5, 2017
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
8:1326(a) and (b)(1) Illegal Reentry After Removal From The United States	06/10/2017	1

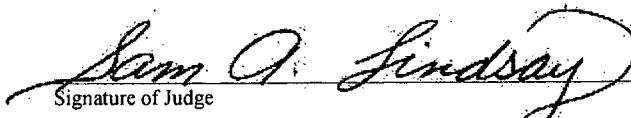
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 6, 2018

Date of Imposition of Judgment



Sam A. Lindsay, United States District Judge
 Name and Title of Judge

August 8, 2018

Date

DEFENDANT: ARTURO TORRES-CABRERA
CASE NUMBER: 3:17-CR-00627-L(1)

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Thirty-three (33) months as to Count 1.**

The court makes the following recommendations to the Bureau of Prisons:

The court recommends that Defendant be allowed to serve his sentence at FCI, Seagoville, if he is eligible.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on 08/08/2018 to

at FCI Seagoville, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ARTURO TORRES-CABRERA
CASE NUMBER: 3:17-CR-00627-L(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Two (2) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: ARTURO TORRES-CABRERA
CASE NUMBER: 3:17-CR-00627-L(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: ARTURO TORRES-CABRERA
CASE NUMBER: 3:17-CR-00627-L(1)

SPECIAL CONDITIONS OF SUPERVISION

As a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

In the event the defendant is not deported upon release from imprisonment, the defendant shall comply with the standard conditions contained in this Judgment and shall comply with the mandatory and special conditions.

DEFENDANT: ARTURO TORRES-CABRERA
CASE NUMBER: 3:17-CR-00627-L(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution

the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ARTURO TORRES-CABRERA
CASE NUMBER: 3:17-CR-00627-L(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.