

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MIGUEL ESPARZA-SALAZAR,
Petitioner

v.
UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

EXHIBIT

DESCRIPTION OF DOCUMENT

- “A” Opinion of the Court of Appeals in *United States of America v. Miguel Esparza-Salazar*, No. 18-40283 (5th Cir. March 25, 2019 (unpublished))
- “B” Judgment of the United States District Court in *United States of America v. Miguel Esparza-Salazar*, No. 1:17-CR-00644 (S.D. TX April 13, 2018)
- “C” Order Appointing Counsel

APPENDIX A

Opinion from Court of Appeals in *United States of America v. Miguel Esparza-Salazar*, No. 18-40283 (5th Cir. March 25, 2019 (unpublished))

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-40283
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
March 25, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MIGUEL ESPARZA-SALAZAR,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:17-CR-644-1

Before KING, SOUTHWICK, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Miguel Esparza-Salazar appeals the below-guidelines sentence of 84 months of imprisonment for his conviction of illegal reentry after deportation, in violation of 8 U.S.C. § 1326(a) & (b)(1). After Esparza-Salazar pleaded guilty and the district court accepted the plea, he and the Government entered a so-called “plea agreement” that contained, in part, a sentencing recommendation. The agreement also contained an appeal waiver, which the Government now

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 18-40283

seeks to enforce. Esparza-Salazar argues that the appeal waiver is ineffective because the district court failed to review its terms with him, as required by Federal Rule of Criminal Procedure 11(b)(1)(N). Because the appeal waiver is ineffective, Esparza-Salazar argues, this court can consider the merits of his appeal. As to the merits, Esparza-Salazar argues that the district court improperly sentenced him to more than two years of imprisonment because the § 1326(b) statutory enhancement is unconstitutional, particularly where, as here, it was not pleaded in the indictment and proven beyond a reasonable doubt. Esparza-Salazar correctly concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but seeks to preserve the argument for possible Supreme Court review.

In the interest of judicial efficiency, we pretermit the non-jurisdictional appeal waiver issue and proceed to the merits. *See United States v. Story*, 439 F.3d 226, 230-31 (5th Cir. 2006). In *Almendarez-Torres*, 523 U.S. at 239-47, the Supreme Court held that for purposes of a statutory sentencing enhancement, a prior conviction is not a fact that must be alleged in the indictment or found by a jury beyond a reasonable doubt. We have held that subsequent Supreme Court decisions did not overrule *Almendarez-Torres*. *See United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arellano*, 492 F.3d 624, 625-26 (5th Cir. 2007).

Because Esparza-Salazar's sole argument on the merits is foreclosed, we AFFIRM the judgment of the district court.

APPENDIX B

Judgment of the United States District Court in
United States of America v. Miguel Esparza-Salazar,
No. 1:17-CR-00644 (S.D. TX April 13, 2018)

UNITED STATES DISTRICT COURT
Southern District of Texas
Holding Session in Brownsville

ENTERED

April 13, 2018

David J. Bradley, Clerk

UNITED STATES OF AMERICA
v.
MIGUEL ESPARZA-SALAZAR

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 1:17CR00644-001

USM NUMBER: 14225-041

 See Additional Aliases.

THE DEFENDANT:

pleaded guilty to count(s) 1 on October 17, 2017

pleaded nolo contendere to count(s) _____ which was accepted by the court.

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 U.S.C. §§ 1326(a) and 1326(b)(1)	Alien Unlawfully Found in the United States After Deportation	09/01/2017	1

 See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 3 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.

March 21, 2018

Date of Imposition of Judgment

Signature of Judge

ROLANDO OLVERA
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

April 13, 2018

Date

DEFENDANT: **MIGUEL ESPARZA-SALAZAR**
CASE NUMBER: **1:17CR00644-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 84 months.

The Court further recommends the defendant be given credit for time served.

See Additional Imprisonment Terms.

The court makes the following recommendations to the Bureau of Prisons:
Placement in a facility at/or near South Texas

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 _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MIGUEL ESPARZA-SALAZAR
CASE NUMBER: 1:17CR00644-001

CRIMINAL MONETARY PENALTIES

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

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

- See Additional Terms for Criminal Monetary Penalties.
- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

- See Additional Restitution Payees.

TOTALS	<u>\$0.00</u>	<u>\$0.00</u>
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- 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:

- Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* 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.

APPENDIX C
Order Appointing Counsel

ENTERED

March 28, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

UNITED STATES OF AMERICA

V.

CR. NO. B-17-0644

MIGUEL ESPARZA-SALAZAR

ORDER

This Court having considered the EX PARTE MOTION TO WITHDRAW AS COUNSEL ON APPEAL AND FOR APPOINTMENT OF SUBSTITUTE COUNSEL in the above styled and numbered cause is of the opinion that it should be and is hereby **GRANTED**.

IT IS THEREFORE ORDERED, that the Federal Public Defender's Office be substituted in the above styled and numbered cause and Attorney _____ Roberto Balli is hereby appointed to represent the Defendant.

SO ORDERED this the 28th day of March, 2018, at Brownsville, Texas.


HONORABLE ROLANDO OLVERA
UNITED STATES DISTRICT JUDGE