

No. 20-6066

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IN THE SUPREME COURT OF THE UNITED STATES

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RODOLFO SEGURA-VIRGEN, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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MEMORANDUM FOR THE UNITED STATES

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Under 8 U.S.C. 1326(d), a defendant charged with unlawful reentry into the United States following removal may assert the invalidity of the original removal order as an affirmative defense only if he “demonstrates” three things, including that “the entry of the removal order was fundamentally unfair,” 8 U.S.C. 1326(d)(3), and that the removal proceedings “improperly deprived the alien of the opportunity for judicial review,” 8 U.S.C. 1326(d)(2). Petitioner contends (Pet. 23-26) that his expedited removal proceedings were “fundamentally unfair” because he was removed based on a crime that, under current law, does not qualify as a removable offense. Petitioner also contends (Pet. 26-28)

that he was "deprived" of "the opportunity for judicial review" because he signed an appeal waiver without being specifically advised of his ability to contest the determination that his crime qualified as a removable offense.

The questions that petitioner presents are related to the question currently before the Court in United States v. Palomar-Santiago, cert. granted, No. 20-437 (Jan. 8, 2021). Palomar-Santiago presents the question whether a defendant automatically satisfies all of the requirements of Section 1326(d) by showing that he was removed for a crime that would not be considered a removable offense under current circuit law, even if he cannot independently demonstrate administrative exhaustion or deprivation of the opportunity for judicial review. Because the proper disposition of the petition for a writ of certiorari in this case may be affected by the Court's resolution of Palomar-Santiago, the petition should be held pending the decision in Palomar-Santiago and then disposed of as appropriate in light of that decision.\*

Respectfully submitted.

JEFFREY B. WALL  
Acting Solicitor General

JANUARY 2021

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\* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.