

APPENDIX A

United States v. Bustamante-Muniz,

No. 20-50536

(5th Cir. Dec. 17, 2020) (per curiam)

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 17, 2020

Lyle W. Cayce
Clerk

No. 20-50536
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDMUNDO BUSTAMANTE-MUNIZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:19-CR-844-1

Before JOLLY, ELROD, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Edmundo Bustamante-Muniz appeals his sentence of 57 months of imprisonment and three years of supervised release, which the district court imposed following his guilty plea conviction for illegal reentry into the United States after deportation. He argues that the recidivism enhancement under

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-50536

8 U.S.C. § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the issue for further review. The Government moves for summary affirmance, asserting that Bustamante-Muniz's argument is foreclosed.

The parties are correct that Bustamante-Muniz's assertion is foreclosed by *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). Accordingly, the Government's motion for summary affirmance is GRANTED, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

APPENDIX B

United States v. Bustamante-Muniz,

Indictment, P-19-CR-844

(W.D. Tex. Nov. 14, 2019)

FILED

NOV 14 2019

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY Ab
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDMUNDO BUSTAMANTE-MUNIZ,

Defendant.

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NO. P-19-CR-844

INDICTMENT

[Vio: 8 U.S.C. § 1326 Entry after Deportation]

THE GRAND JURY CHARGES:

COUNT ONE

[8 U.S.C. § 1326]

On or about November 10, 2019, in the Western District of Texas, Defendant,

EDMUNDO BUSTAMANTE-MUNIZ,

an alien, attempted to enter, entered, and was found in the United States having previously been denied admission, excluded, deported, and removed therefrom on or about December 26, 2012, and that the defendant had not received consent to reapply for admission to the United States from the U.S. Attorney General or the Secretary of the Department of Homeland Security, the successor for this function pursuant to Title 6, United States Code, Sections 202(3), 202(4), and 557.

A violation of Title 8, United States Code, Section 1326.

A TRUE BILL

Original signed by the
foreperson of the Grand Jury

FOREPERSON OF THE GRAND JURY

JOHN F. BASH
UNITED STATES ATTORNEY

BY:

GINA GILMORE

Assistant U.S. Attorney

APPENDIX C

8 U.S.C. § 1326



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

[United States Code Annotated](#)

[Title 8. Aliens and Nationality \(Refs & Annos\)](#)

[Chapter 12. Immigration and Nationality \(Refs & Annos\)](#)

[Subchapter II. Immigration](#)

[Part VIII. General Penalty Provisions](#)

8 U.S.C.A. § 1326

§ 1326. Reentry of removed aliens

Effective: September 30, 1996

[Currentness](#)

(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 chapter or any prior Act,

shall be fined under Title 18, 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, 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 1225\(c\)](#) of this title because the alien was excludable under [section 1182\(a\)\(3\)\(B\)](#) of this title or who has been removed from the United States pursuant to the

provisions of subchapter V, 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 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.¹ or

(4) who was removed from the United States pursuant to [section 1231\(a\)\(4\)\(B\)](#) of this title 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, 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.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to [section 1252\(h\)\(2\)](#)² of this title who 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 incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that--

- (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;
- (2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
- (3) the entry of the order was fundamentally unfair.

CREDIT(S)

(June 27, 1952, c. 477, Title II, ch. 8, § 276, 66 Stat. 229; [Pub.L. 100-690, Title VII, § 7345\(a\)](#), Nov. 18, 1988, 102 Stat. 4471; [Pub.L. 101-649, Title V, § 543\(b\)\(3\)](#), Nov. 29, 1990, 104 Stat. 5059; [Pub.L. 103-322, Title XIII, § 130001\(b\)](#), Sept. 13, 1994, 108 Stat. 2023; [Pub.L. 104-132, Title IV, §§ 401\(c\)](#), 438(b), 441(a), Apr. 24, 1996, 110 Stat. 1267, 1276, 1279; [Pub.L. 104-208](#), Div. C, Title III, §§ 305(b), 308(d)(4)(J), (e)(1)(K), (14)(A), 324(a), (b), Sept. 30, 1996, 110 Stat. 3009-606, 3009-618 to 3009-620, 3009-629.)

[Notes of Decisions \(1300\)](#)

Footnotes

¹ So in original. The period probably should be a semicolon.

² So in original. [Section 1252](#) of this title, was amended by [Pub.L. 104-208](#), Div. C, Title III, § 306(a)(2), Sept. 30, 1996, 110 Stat. 3009-607, and as so amended, does not contain a subsec. (h); for provisions similar to those formerly contained in [section 1252\(h\)\(2\)](#) of this title, see [8 U.S.C.A. § 1231\(a\)\(4\)](#).

8 U.S.C.A. § 1326, 8 USCA § 1326

Current through P.L. 115-173. Also includes P.L. 115-176 to 115-178. Title 26 current through 115-182.

End of Document

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