

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JESUS MANUEL ANCHANDO-QUEZADA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Assistant Federal Public Defender

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 20-10552
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JESUS MANUEL ANCHONDO-QUEZADA, *also known as* JESUS
GOMEZ-GOMEZ, *also known as* JESUS MANUEL ANCHANDO-
QUEZADA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-25-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on
file.

IT IS ORDERED and ADJUDGED that the judgment of the
District Court is AFFIRMED.

United States Court of Appeals for the Fifth Circuit

No. 20-10552
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JESUS MANUEL ANCHONDO-QUEZADA, *also known as* JESUS
GOMEZ-GOMEZ, *also known as* JESUS MANUEL ANCHANDO-
QUEZADA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-25-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Jesus Manuel Anchondo-Quezada appeals the 30-month, within-guidelines sentence imposed following his guilty plea for illegal reentry after removal from the United States. He contends that his sentence is

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 20-10552

unconstitutional because his indictment alleged only those facts sufficient for a conviction under 8 U.S.C. § 1326(a) and did not include any allegations of a prior conviction necessary for a sentence enhancement under § 1326(b)(1). Relatedly, he asserts that his guilty plea was involuntary and that the district court violated Federal Rule of Criminal Procedure 11(b)(1)(G) because it did not admonish him that the fact of a prior conviction is an essential element of the offense. Thus, Anchondo-Quezada requests that we vacate the sentence and remand for resentencing under § 1326(a). He concedes that these arguments are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998), but he seeks to preserve the issues for further review. The Government filed an unopposed motion for summary affirmance in which it agrees that the issues are foreclosed and, in the alternative, a motion for an extension of time to file a brief.

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. This court has held that subsequent Supreme Court decisions did not overrule *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014) (considering the effect of *Alleyne v. United States*, 570 U.S. 99 (2013)); *United States v. Pineda-Arellano*, 492 F.3d 624, 625-26 (5th Cir. 2007) (considering the effect of *Apprendi v. New Jersey*, 530 U.S. 466 (2000)). Therefore, Anchondo-Quezada's arguments are foreclosed, and summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED as moot.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

v.

JESUS MANUEL ANCHONDO-QUEZADA

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:20-CR-00025-O(01)
U.S. Marshal's No.: 59950-177
Aisha Saleem for Michael Levi Thomas,
Assistant U.S. Attorney
Michael Lehmann, Attorney for the Defendant

On February 18, 2020 the defendant, JESUS MANUEL ANCHONDO-QUEZADA, entered a plea of guilty as to Count One of the Indictment filed on January 28, 2020. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1326(a) and (b)(1)	Illegal Reentry After Deportation	6/3/2018	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on January 28, 2020.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed June 1, 2020.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed June 2, 2020.

Judgment in a Criminal Case
Defendant: JESUS MANUEL ANCHONDO-
QUEZADA
Case Number: 4:20-CR-00025-O(1)

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IMPRISONMENT

The defendant, JESUS MANUEL ANCHONDO-QUEZADA, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **THIRTY (30) months** as to Count One of the Indictment filed on January 28, 2020.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) years** as to Count One of the Indictment filed on January 28, 2020.

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 USC § 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 immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions contained in the Judgment and shall comply with the mandatory and special conditions stated herein:

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

Judgment in a Criminal Case
Defendant: JESUS MANUEL ANCHONDO-
QUEZADA
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- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry; and,

refrain from any unlawful use of a controlled substance. The defendant 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.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case
Defendant: JESUS MANUEL ANCHONDO-
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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 Marshal