

APPENDIX A

United States v. Rosales-Sanchez,
Nos. 21-50598 & 21-50599,
(5th Cir. Dec. 8, 2021) (per curiam)

United States Court of Appeals for the Fifth Circuit

No. 21-50598



A True Copy
Certified order issued Dec 08, 2021

Tyke W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 21-50598

CONSOLIDATED WITH
No. 21-50599

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CLEMENTE ROSALES-SANCHEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas

USDC No. 2:18-CR-1385-1

USDC No. 2:20-CR-427-1

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:

Appellant Clemente Rosales-Sanchez appeals the sentence imposed following his guilty plea conviction of illegal reentry. The sole argument

Rosales-Sanchez raises on appeal is that the enhancement of his sentence under 8 U.S.C. § 1326(b) is unconstitutional because the fact of a prior conviction or aggravated felony conviction was neither found by a jury nor alleged in the indictment. He acknowledges that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he wishes to preserve the issue for further review. He has moved for summary affirmance.

In *Almendarez-Torres*, the Supreme Court held that a prior conviction is not a fact that must be alleged in an indictment or found beyond a reasonable doubt by a jury for purposes of a statutory sentencing enhancement. *Id.* at 239–47. This court has held that subsequent Supreme Court decisions such as *Alleyne v. United States*, 570 U.S. 99 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), did not overrule *Almendarez-Torres*. See, e.g., *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). Accordingly, Rosales-Sanchez’s concession of foreclosure is correct, and summary disposition is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

IT IS ORDERED that Appellant’s unopposed motion for summary affirmance is GRANTED.

APPENDIX B

United States v. Rosales-Sanchez,
Indictment,
No. 2:20-cr-00427-ILL,
(W.D. Tex. Feb. 19, 2020)

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FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

2018 JUN 27 PM 12:54

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]*
DEPUTY CLERK

UNITED STATES OF AMERICA

§ Cause No.:

v.

§ **INDICTMENT**

CLEMENTE ROSALES-SANCHEZ

§ [Vio: 8 U.S.C. § 1326(a) & (b)(1)/(2):
Illegal Re-entry into the United States.]

DR 18 CR 1385

THE GRAND JURY CHARGES:

COUNT ONE
[8 U.S.C. § 1326(a) & (b)(1)/(2)]

That on or about June 8, 2018, in the Western District of Texas, Defendant,

CLEMENTE ROSALES-SANCHEZ,

an alien, attempted to enter, entered, and was found in the United States having previously been denied admission, excluded, deported and removed from the United States on or about May 30, 2018, and that the Defendant had not received the consent of the Attorney General of the United States and the Secretary of the Department of Homeland Security, to reapply for admission to the United States, in violation of Title 8, United States Code, Section 1326(a) and (b)(1)/(2).

A TRUE BILL. •

FOREPERSON

JOHN F. BASH
United States Attorney

By: _____

[Signature]
SARAH ELLA SPEARS
Assistant United States 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.

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