

United States Court of Appeals
for the Fifth Circuit

No. 22-10266
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 26, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE SANTOS PEREZ-GONZALEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CR-282-1

Before JONES, HAYNES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Jose Santos Perez-Gonzalez appeals his conviction and sentence for illegal reentry into the United States after deportation pursuant to 8 U.S.C. § 1326(a) and (b)(1). Perez-Gonzalez contends that the recidivism enhancement in § 1326(b) is unconstitutional because it permits a sentence

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 22-10266

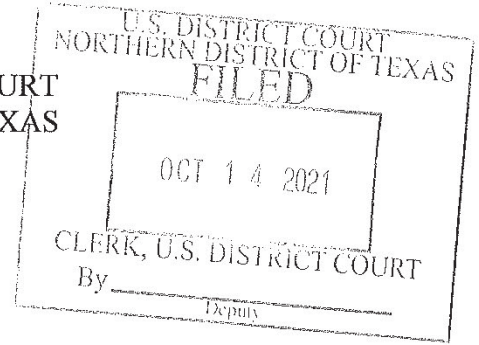
above the otherwise-applicable statutory maximum established by § 1326(a), based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He thus argues that the imposition of a three-year term of supervised release violates due process, and he maintains that he should be sentenced to no more than one year of supervised release. While Perez-Gonzalez acknowledges this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), he nevertheless seeks to preserve the issue for further review. The Government has moved without opposition for summary affirmance or, alternatively, for an extension of time to file its brief.

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 *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Accordingly, Perez-Gonzalez is correct that his argument is foreclosed, and summary disposition is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

The 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 is DENIED.

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



UNITED STATES OF AMERICA

v.

No.

JOSE SANTOS PEREZ-GONZALEZ (01)

4-21CR-282-Y

INDICTMENT

The Grand Jury Charges:

Count One

Illegal Reentry After Deportation
(Violation of 8 U.S.C. § 1326(a) and (b)(1))

On or about August 13, 2021, in the Fort Worth Division of the Northern District of Texas, defendant **Jose Santos Perez-Gonzalez**, an alien, was found in the United States having previously been deported and removed from the United States on or about May 19, 2020, and the defendant had not received the consent of the Attorney General of the United States or the Secretary of the Department of Homeland Security, to reapply for admission to the United States.


In violation of 8 U.S.C. § 1326(a) and (b)(1).

A TRUE BILL.



FOREPERSON

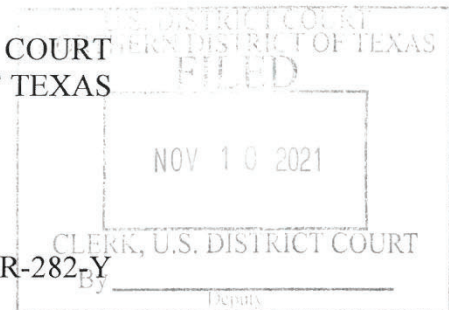
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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



UNITED STATES OF AMERICA

v.

No. 4:21-CR-282-Y

JOSE SANTOS PEREZ-GONZALEZ (01)

FACTUAL RESUME

I. Plea:

Count One: Illegal Reentry after Deportation, in violation of 8 U.S.C. § 1326(a) & (b)(1).

II. Penalties:

The penalties the Court can impose include:

- a. a term of imprisonment of not more than ten (10) years;
- b. a fine of not more than \$250,000;
- c. a term of supervised release of not more than three (3) years. If the defendant violates the conditions of supervised release, he could be imprisoned for an additional term of imprisonment;
- d. a mandatory special assessment of \$100;
- e. costs of incarceration and supervision; and
- f. pleading guilty may have consequences with respect to the defendant's immigration status, including removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequences include his automatic removal from the United States.

III. Essential Elements of the Offense:

In order to establish the offense alleged in Count One, the government must prove the following elements beyond a reasonable doubt:

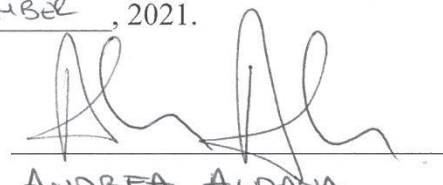
- First: That on or about the date alleged, the defendant was an alien;
- Second: That the defendant was previously removed from the United States;
- Third: That the defendant was found in the United States; and
- Fourth: That the defendant had not received the express consent of either the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission to the United States since the time of the defendant's previous removal.

IV. Stipulation of Facts:

Jose Santos Perez-Gonzalez (Perez) is a citizen and national of Mexico, born in Doctor Arvo, Nuevo Leon, Mexico. On May 19, 2020, Perez was deported and removed to Mexico through Laredo, Texas. On August 13, 2021, Perez was encountered by immigration authorities at the Lake Worth Police Department in Lake Worth, Texas, within the Federal Northern District of Texas. Perez had re-entered the United States illegally, and he had not applied for nor received permission from the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission to the United States at any time after being deported.

SIGNED on this the 2 day of November, 2021.


JOSE SANTOS PEREZ-GONZALEZ
Defendant


ANDREA ALDANA
Attorney for Defendant