

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JUAN SALAZAR-GRIMALDO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

/s/ Christy Posnett Martin

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Appendix A Opinion of Fifth Circuit, CA No. 23-10398,
United States v. Salazar-Grimaldo, 2023 WL 8234250
(5th Cir. Nov. 28, 2023)(unpublished).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered April 14, 2023.
United States v. Salazar-Grimaldo, Dist. Court 3:21-CR-636-1.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-10398
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 28, 2023
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JUAN SALAZAR-GRIMALDO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:21-CR-636-1

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

PER CURIAM:*

Juan Salazar-Grimaldo pleaded guilty to illegal reentry following prior removal. The district court sentenced him within the guidelines range to 37 months in prison. He appeals his sentence.

Salazar-Grimaldo contends that the district court erred by considering his prior arrest and indictment for aggravated assault with a deadly weapon

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

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to determine his sentence. He argues that the district court improperly relied on the description of the charge contained in the presentence report (PSR). He asserts that the description lacked sufficient indicia of reliability and was tantamount to a bare arrest record. Because he did not assert this issue in the district court, we apply plain error review. *See United States v. Williams*, 620 F.3d 483, 493 (5th Cir. 2010).

“[O]ur precedent is clear that the consideration of the mere fact of a prior arrest is prohibited.” *United States v. Harris*, 702 F.3d 226, 231 (5th Cir. 2012); *see also United States v. Johnson*, 648 F.3d 273, 278 (5th Cir. 2011) (“[I]t is error for a district court to consider a defendant’s ‘bare arrest record’ at sentencing.”). However, the PSR here did not just note the fact of the arrest and indictment without further details. Rather, the description in the PSR gave details concerning the factual underpinnings of the charge and had corresponding information about the conduct that led to the arrest and indictment for aggravated assault with a deadly weapon; the PSR, *inter alia*, identified the alleged victim, included information about the underlying conduct, and set forth the reason why the case was dismissed. *See United States v. Reyna-Aragon*, 992 F.3d 381, 389-91 (5th Cir. 2021). Thus, there was an adequate evidentiary basis, and the PSR could be viewed as reliable because Salazar-Grimaldo did not present rebuttal evidence or show that the information in the PSR should not be credited. The district court therefore could adopt the information in the PSR and rely upon its description of the charge for sentencing purposes. *See id.* at 390; *Harris*, 702 F.3d at 230-31. Further, Salazar-Grimaldo has not shown that the district court’s consideration of the PSR’s description of the charge in conjunction with other factors—including, *inter alia*, his convictions, his illegal reentry, and the 18 U.S.C. § 3553 factors—affected his substantial rights. *See Reyna-Aragon*; 992 F.3d at 391.

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Salazar-Grimaldo further challenges the constitutionality of 8 U.S.C. § 1326(b). He contends that § 1326(b) allows a sentence above the otherwise applicable statutory maximum established by § 1326(a) to be imposed based on facts that are not alleged in the indictment or found by a jury beyond a reasonable doubt. He correctly concedes that his claim is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998), and raises it only to preserve it for further review. *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019).

The judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JUAN SALAZAR-GRIMALDOCase Number: **3:21-CR-00636-B(1)**USM Number: **03342-510****Juan Gabriel Rodriguez**

Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 1 of the one-count Indictment filed December 21, 2021.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326(a) & (b)(2) Illegal Reentry After Removal from the United States	02/23/2021	1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

April 13, 2023

Date of Imposition of Judgment



Signature of Judge

JANE J BOYLE, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

April 14, 2023

Date

DEFENDANT: JUAN SALAZAR-GRIMALDO
CASE NUMBER: 3:21-CR-00636-B(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

37 months. This sentence shall run consecutively to any sentence imposed in the defendant's parole revocation in Case Nos. F-0720868, F-0720869, and F-0720872, as these cases are not related to the instant federal offense.

No term of supervised release imposed.

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 U.S.C. § 1101 et seq. If ordered deported or removed, the defendant shall remain outside the United States.

The court makes the following recommendations to the Bureau of Prisons:
that the defendant be allowed to serve his sentence at a BOP facility in the North Texas area, if eligible.

The defendant is remanded to the custody of the United States Marshal.
 The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: JUAN SALAZAR-GRIMALDO
 CASE NUMBER: 3:21-CR-00636-B(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JUAN SALAZAR-GRIMALDO
 CASE NUMBER: 3:21-CR-00636-B(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** Lump sum payments of \$ _____ due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B** Payment to begin immediately (may be combined with C, D, or F below); or
- C** Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.