NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

CARLOS GUADALUPE SANCHEZ-FELIX, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Mr. Sanchez-Felix and Mr. Quintanilla-Dominguez were prosecuted under 8 U.S.C. § 1326, a statute used in almost a fifth of all federal criminal cases. Originally adopted in 1929, this illegal-reentry statute, whose focus is still substantially the same, has undeniable racist origins. The Tenth Circuit rejected the claim here that § 1326 violates the Fifth Amendment because it has a racially discriminatory purpose. The court did so, on the authority of its decision in United States v. Amador-Bonilla, 102 F.4th 1150 (10th Cir. 2024), which gave little to no weight to the racism that infected the provision when it was first enacted. Instead, that decision held there was insufficient showing of racially discriminatory purpose in the 1952 reenactment of the provision, even though there was proof of similar racism in connection with the broader bill of which § 1326 was a part.

This petition raises the following question:

Must a court considering the reenactment of a provision that was originally adopted for a racially discriminatory purpose give meaningful consideration to the provision's racist origins, and consider proof of racial animus at the time of the reenactment through that lens?

LIST OF PARTIES

Petitioners: Carlos Guadalupe Sanchez-Felix and Miguel Quintanilla-Dominguez

Respondent: United States of America

STATEMENT OF RELATED CASES

In Mr. Sanchez-Felix's case:

United States v. Sanchez-Felix, No. 21-cr-00310-PAB (D. Colo.)
Judgment entered May 31, 2022

United States v. Sanchez-Felix, No. 22-1188 (10th Cir.)
Judgment entered September 16, 2024

In Mr. Quintanilla-Dominguez's case:

United States v. Quintanilla-Dominguez,
No. 21-cr-00406-RM (D. Colo.)
(Judgment entered June 24, 2022)

United States v. Quintanilla-Dominguez, No. 22-1198 (10th Cir.)
(Judgment entered September 18, 2024)

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PRAYER

Petitioners, Carlos Guadalupe Sanchez-Felix and Miguel Quintanilla-Dominguez, each respectfully prays that a Writ of Certiorari be issued in his case to review the opinion of the United States Court of Appeals for the Tenth Circuit that, in Mr. Sanchez-Felix's case, was handed down on September 16, 2024, and that, in Mr. Quintanilla-Dominguez's case, was handed down on September 18, 2024.

OPINIONS BELOW

In Mr. Sanchez-Felix's case, the unpublished decision of the United States Court of Appeals for the Tenth Circuit, see United States v. Sanchez-Felix, 2024 WL 4198648 (10th Cir. Sept. 16, 2024), is found in the Appendix at A1. The decision of the United States District Court for the District of Colorado relevant to the question presented is found in the Appendix at A2, and that court's decision denying reconsideration is found in the Appendix at A22.

In Mr. Quintanilla-Dominguez's case, the unpublished decision of the United States Court of Appeals for the Tenth Circuit, see United States v. Quintanilla-Dominguez, 2024 WL 4224251 (10th Cir. Sept. 18, 2024), is found in the Appendix at A27. The oral decision of the United States

District Court for the District of Colorado relevant to the question presented is found in the Appendix at A28.

JURISDICTION

In both Mr. Sanchez-Felix's case and Mr. Quintanilla-Dominguez's case, the United States District Court for the District of Colorado had jurisdiction over the criminal action pursuant to 18 U.S.C. § 3231. The United States Court of Appeals for the Tenth Circuit had jurisdiction in each case under 28 U.S.C. § 1291.

This Court's jurisdiction is premised upon 28 U.S.C. § 1254(1). The earlier of the two judgments in which review is sought (the one in Mr. Sanchez-Felix's case) issued on September 16, 2024, and ninety days from that date is Sunday, December 15, 2024, see 28 U.S.C. § 2101(c), making the petition due on the next business day of Monday, December 16. See Sup. Ct. R. 30.1; see also e.g., Caspari v. Bohlen, 510 U.S. 383, 390-91 (1994); United Nat. Bank of Wichita, Kansas v. Lamb, 337 U.S. 38, 40-41 (1949). This petition, filed on December 16, is therefore timely.

This single petition covering both judgments is permitted by Supreme Court Rule 12.4. The judgments sought to be reviewed are from the same court and involve the same question.

CONSTITUTIONAL PROVISION INVOLVED

This petition concerns the proper application of the equal-protection component of the Fifth Amendment to the Constitution. The Fifth Amendment provides as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., amend. V.

STATEMENT OF THE CASE

a. Mr. Sanchez-Felix was charged with a single count of being found in this country after having been denied admission, excluded, removed or deported, in violation of 8 U.S.C. § 1326(a). The indictment alleged that this denial of admission, exclusion, removal or deportation occurred after Mr. Sanchez-Felix had committed an aggravated felony, increasing the severity of the offense under 8 U.S.C. § 1326(b)(2).

Mr. Sanchez-Felix moved to dismiss the charge, alleging that the illegal-reentry statute violated the equal-protection component of the Due Process Clause of the Fifth Amendment of the constitution. Invoking Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 265-66 (1977), his motion detailed the anti-Latino history of what was named the Undesirable Aliens Act of 1929, the original source of 8 U.S.C. § 1326. The motion explained how the provision retained its racially discriminatory intent through its reenactment in 1952. The motion, and associated reply, contained hundreds of pages of exhibits to support the claim of unconstitutionality.

The district court denied the motion without a hearing. A2-21. It also denied Mr. Sanchez-Felix's motion to reconsider that ruling. A22-26. Mr. Sanchez-Felix then entered a conditional guilty plea, pursuant to Federal Rule of Criminal Procedure 11(a)(2), under which he reserved his right to appeal the district court's rulings.

The Tenth Circuit affirmed the judgment of the district court, holding that its decision in United States v. Amador-Bonilla, 102 F.4th 1110 (10th Cir. 2024), foreclosed Mr. Sanchez-Felix's claim.

b. Mr. Quintanilla-Dominguez's case has a similar procedural history. He was also charged with a single count of being found in this country after having been denied admission, excluded, removed or deported, in violation of 8 U.S.C. § 1326(a). Likewise, his indictment alleged that the denial of admission, exclusion, removal or deportation occurred after he had committed an aggravated felony, making the offense a more serious one under 8 U.S.C. § 1326(b)(2).

Mr. Quintanilla-Dominguez filed a similar motion to dismiss the charge on the ground that § 1326 was enacted with racial animus, and so violated the equal-protection component of the Due Process Clause of the

Fifth Amendment. He too supported the motion, and his associated reply, with extensive exhibits.

The district court, after holding an evidentiary hearing, denied the motion. Mr. Quintanilla, like Mr. Sanchez-Felix, then entered a conditional guilty plea under Rule 11(a)(2), reserving his right to appeal the district court's ruling.

As it did in Mr. Sanchez-Felix's case, the Tenth Circuit held that its decision in Amador-Bonilla controlled the outcome and foreclosed relief. It therefore affirmed the judgment of the district court. A28.

c. In its decision in Amador-Bonilla, the Tenth Circuit recognized that the record associated with the passage of the 1929 Undesirable Act, "the predecessor of 8 U.S.C. § 1326," Amador-Bonilla, 102 F.4th at 1116, was infused with racism. The record of the 1929 Act, the Tenth Circuit declared, "is full of repugnant ideas and language." Id. And the court agreed that when Congress reenacted the provision as part of a broader overhaul of the immigration laws in 1952, it adopted in § 1326 "the 1929 Act's language." Id. at 1117.

The decision in Amador-Bonilla, though, gave little to no weight to the admittedly racist origins of § 1326 in the 1929 Act. The Tenth Circuit relied for its approach on its view of this Court's decision in Abbott v. Perez, 585 U.S. 579 (2018).

The Tenth Circuit invoked Perez in holding that "Congress is not required to cleanse the discriminatory 'taint' from a law it otherwise has the power to enact by actively disavowing its past." Amador-Bonilla, 102 F.4th at 1117. The court also did not assess the proof of similar racial animus against Latin Americans -- both around the time of consideration of the 1952 Act and in the passage of the 1952 Act itself -- with the benefit of the racist origin of the 1929 Act from which it was drawn. Instead, the Tenth Circuit rejected each area of proof of such racial animus on a stand-alone basis, and without regard to the context provided by the racist origin of § 1326. Id. at 1118-19.

REASONS FOR GRANTING THE WRIT

This Court should grant review to ensure that courts properly consider racial animus in the original enactment of a statute when the statute has been reenacted.

This petition raises an important issue about the proper application of the Arlington Heights framework when a statute infected with racial animus has been reenacted. Under Arlington Heights, a court deciding whether racial animus played a role in the passage of a facially neutral statute must "engage in a sensitive inquiry into such circumstantial and direct evidence of intent as may be available," Arlington Heights, 429 U.S. at 266, examining such material as the historical background, legislative history and disparate impact of the law, id. at 267-68.

The Tenth Circuit, in its decision in Amador-Bonilla, which controlled the outcome of the two cases in this petition, gave little or no weight in the Arlington Heights analysis to the admittedly racist origins of the 1929 Act in which § 1326 originated. The court looked for its approach to Abbott v. Perez. But not only is the Tenth Circuit's approach not required by Perez, it is actually contrary to Perez.

As an initial matter, Perez is not about a legislature's reenactment of a statute with a discriminatory pedigree. This Court had earlier directed a three-judge court to make adjustments to a 2011, Texas redistricting plan, called for by the Constitution and the Voting Rights Act. Perez, 585 U.S. at 584. The three-judge court, acting to scrub any legal defects from 2011 plan, id. at 588, modified the prior legislative plan, and the Texas legislature in 2013 adopted the court's work "with only minor modifications," id. at 584. There was thus not in Perez, as there is here, a legislature's silent reenactment of a racially motivated provision.

In Perez, then, the legislature in 2013 could not be thought to have just carried forward the racial animus of its 2011 plan. What was under review in Perez was instead the legislature's adoption of a plan that a court had, in the interim, modified to clear away any racial animus.

It was in this context that this Court made the pronouncements that the Tenth Circuit invoked in Amador-Bonilla. The Tenth Circuit quoted Perez in stating that "we do not require a demonstration that Congress had a 'change of heart' or 'engage[d] in a deliberative process' when it reenacted a law to ensure the provision at issue was 'cured' of any taint of

prior unconstitutional motives." Amador-Bonilla, 102 F.4th at 1117 (quoting Perez, 585 U.S. at 605) (internal quotations omitted by, and brackets added by, the court in Amador-Bonilla). But this Court in Perez was careful in saying that this applied to the situation before it, and not necessarily to the silent reenactment of a racially tainted statute like the one here.

This Court in Perez first stressed it was not dealing with "a case in which a law originally enacted with discriminatory intent is later reenacted by a different legislature." Perez, 585 U.S. at 604. Rather, it observed, the legislature "enacted, with only very small changes, plans that had been developed by the Texas court pursuant to instructions from this Court 'not to incorporate . . . any legal defects.'" Id. (quotation omitted; ellipses by the Court in Perez). And it was in this context that this Court made its comments about there being no need, for the statute to be upheld, to show a change of heart by the later legislature or that it engaged in a deliberative process to purge the taint of the legislation adopted by the earlier legislature. Id. at 605. Indeed, the Court prefaced these remarks by noting what was, and was not, required "[u]nder these circumstances." Id.

Perez thus does not, in the context of cases like the ones here, stand for the propositions that the Tenth Circuit attributed to it. This Court did not in Perez address whether a later legislature must take affirmative steps to the purge the taint of a racially discriminatory provision that is merely carried forward. But regardless of whether a legislature must, as Justice Sotomayor has suggested, "actually confront a law's tawdry past," Ramos v. Louisiana, 590 U.S. 93, 115 (2020) (Sotomayor, J., concurring in part), the Tenth Circuit seriously misapplied Perez.

Even in the Perez scenario, where intervening action has addressed the racial discrimination of the original provision, the animus of the prior legislature may still be relevant. This Court in Perez was at pains to make this clear. "[W]e do not suggest," it wrote, "that the intent of the 2001 legislature is irrelevant . . . because [the 2013 plan was] previously adopted on an interim basis by the Texas court." Perez, 585 U.S. at 607. Rather, this Court continued, the prior legislature's intent "[is] relevant to the extent that [it] naturally gives rise to -- or tend[s] to refute -- inferences regarding the intent of the 2013 legislature." Id.

What is true in the Perez scenario is necessarily true where there is a reenactment of a discriminatory provision without intervening action taken to purge the racial animus of the original passage. Indeed, where there has been nothing to remove or lessen the taint of the prior enactment, there is all the more reason to think the intent of the earlier legislature will matter. After all, the slate on which the later legislature is writing will not be as clean as it would be in the Perez scenario.

This case is a perfect example of that. The racial animus at play in the 1929 Act was no secret. Indeed, it was named the Undesirable Aliens Act. Amador-Bonilla, 102 F.4th at 1116. A meaningful number of legislators from 1929 were still in Congress in 1952. Id. There were also overt, anti-Latino racist comments in connection with the 1952 Act, id. at 1116-17, which was in keeping with the anti-Latino sentiments that animated the 1929 Act. All of this made it even more unlikely that the racial animus that infused the 1929 Act would somehow be forgotten or overlooked when Congress considered in 1952 the broader immigration bill of which § 1326 was a part.

The Tenth Circuit, though, all but ignored the racial origins of the 1929 Act. It did not treat that origin as a relevant consideration of what occurred in 1952. It did not consider the proof of racial animus in 1952 through the lens of the history of the 1929 Act. Instead, the Tenth Circuit looked at each species of proof in its own right and without regard to the racist origin of the 1929 Act.

For example, there was proof in Amador-Bonilla that a senator called the 1952 Act the "Wetback Bill," and that other senators used the same slur in discussing the bill. Id. at 1118. The Tenth Circuit dismissed this as not revealing the intent of Congress as a whole to discriminate and thus not enough to carry Mr. Amador-Bonilla's burden to show the 1952 Congress acted with racial animus. Id. But whatever the merits of that conclusion in a vacuum, the Tenth Circuit could well have thought it otherwise had it viewed the statements in the light of the racist history of the 1929 Act. The 1952-era statements are much less easily treated as one-offs, and as being the views of only a limited number of senators, when they are considered in the larger context of the reenactment of a well-known, racist provision.

It is much the same with what the Tenth Circuit termed the "deeply offensive" comments of a representative that "Congress ought to consider racial origins and that he preferred western Europeans." Id. The Tenth Circuit remarked that this representative's views could not be attributed to all other Members of the House. Id. But that they were voiced in the context of an immigration bill that included the reenactment of a provision with a racist pedigree makes it far easier to think that they were not just the idiosyncratic and repugnant views of a single Member, and that they instead struck a chord with a much wider audience in the chamber.

Indeed, the Tenth Circuit failed to mention other statements pointed out in the briefing in Amador-Bonilla, including one that reflects a mood reminiscent of that which existed at the time of the passage of the 1929 bill. See Opening Brief in United States v. Amador-Bonilla, Nos. 22-6036 & 22-6037 (10th Cir.), 2022 WL 3130037, *27. Representative Jenkins had served in the House in 1929 Act. He found what was said in connection with the 1952 bill eerily similar to what was said in passage of the 1929 bill, and considered the racist sentiments to be shared by his 1952 colleagues generally. Putting matters in the "undesirables" language of the 1929 bill's

title, he characterized the 1952 House debates as "'reminiscent of the days of 20 years ago when the wishes of the Members was to keep away from our shores the thousands of undesirables just as it is their wish now.'" Id. (quoting 98 Cong. Rec. 4442 (1952)).

In short, Perez commands consideration of a statute's racist past to the extent it bears on the view of a later legislature when it reenacts the provision. Had the Tenth Circuit used such a wider focus it would have been less able to dismiss the views of individual Members. And that wider focus would have left the court more likely to find that racial animus was sufficiently present in the passage of the 1952 Act, consistent with the opinion of a Member who was present for consideration of both the 1929 and 1952 bills.

This approach, which the Tenth Circuit eschewed, keeps faith with the teachings of Arlington Heights itself. This Court there directed that in determining whether racial discrimination was "*a* motivating factor" in the enactment of a provision, 429 U.S. at 266 (emphasis added) -- which is enough to render it violative of Equal Protection, id. at 266-67 -- a court must cast a wide net. A court assessing whether racial discrimination

played a role in a provision's enactment must undertake a "sensitive inquiry into such circumstantial and direct evidence as may be available," examining such things as "the disparate impact, legislative history, and historical background of a law. Id. There is no basis for it to be any different in the context of a reenactment of a provision.

The Tenth Circuit is not alone in its misunderstanding of this Court's authority. The Fifth Circuit has expressly held that its circuit precedent "abrogates the relevance" of the 1929 Act in considering the 1952 Act, and the silent reenactment in the latter bill of § 1326. United States v. Barcenas-Rumualdo, 53 F.4th 859, 866 (5th Cir. 2022). On the other hand, the Fourth Circuit recognizes that, under Perez, "the origins of the 1929 Act" are relevant to the Arlington Heights analysis. United States v. Sanchez-Garcia, 98 F.4th 90, 99 (4th Cir. 2024). That the circuits are divided on this central point of how to apply the Arlington Heights test, with two circuits in direct contravention of the teachings of this Court, makes review by this Court imperative.[1]

[1] The Tenth Circuit in Amador-Bonilla noted that § 1326 was amended several times since 1952, United States v. Amador-Bonilla, 102 F.4th 1110, 1118 (10th Cir. 2024), but that does nothing to minimize the importance of the question presented. A 1988 amendment increased

This Court should grant this petition.

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prison time; a 1990 amendment removed a limit on financial penalties; the 1994 amendment increased potential prison time for felony convictions; and the 1996 amendment increased the penalties where the person who reentered was on probation, parole or supervised release. See United States v. Carrillo-Lopez, 555 F. Supp. 3d 996, 1004 n.11 (D. Nev. 2021), rev'd, 68 F.4th 1133 (9th Cir. 2023), cert. denied, 144 S. Ct. 703 (2024). These penalty increases and additions did not alter the § 1326's substance. Accord Almendarez-Torres v. United States, 523 U.S. 224, 234 (1998) (describing 1990 amendment as a "housekeeping measure"). None of these amendments was a reenactment of § 1326 as a whole, as in the 1952 Act. Just as the "pruning" of bases for disenfranchisement in a provision enacted for a racially discriminatory purpose does not "alter the intent with which the article . . . had been adopted," Abbott v. Perez, 585 U.S. 579, 604 (2018) (describing Hunter v. Underwood, 471 U.S. 222 (1985)), neither do the penalty increases and additions to § 1326.

CONCLUSION

This Court should grant Mr. Sanchez-Felix and Mr. Quintanilla-Dominguez a writ of certiorari.

Respectfully submitted,

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