No._____

IN THE SUPREME COURT OF THE UNITED STATES

RAFAEL PAREDES-HINOJOSA, PETITIONER

V.

UNITED STATES OF AMERICA

_____

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

_____

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QUESTION PRESENTED FOR REVIEW

Whether *Almendarez-Torres v. United States,* 523 U.S. 224 (1998) should be overruled.

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Rafael Paredes asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit on December 12, 2024.

PARTIES TO THE PROCEEDING

The caption of the case names all the parties to the proceedings in the courts below.

RELATED PROCEEDINGS

United States v. Paredes-Hinojosa, U.S. District Court for the Western District of Texas, Number 2:23 CR 00378-DC-1, Judgment entered April 9, 2024.

United States v. Paredes-Hinojosa, U.S. Court of Appeals for the Fifth Circuit, Number 24-50319, Judgment entered December 12, 2024.

OPINION BELOW

The unpublished opinion of the court of appeals is attached as Appendix A.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and judgment of the court of appeals were entered on December 12, 2024. This petition is filed within 90 days after entry of judgment. *See* Supreme Court Rule 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides in pertinent part that "No person shall be held to answer for a capital, or other infamous crime, unless on presentment or indictment from a Grand Jury, . . . nor be deprived of life, liberty, or property without due process of law."

The Sixth Amendment to the U.S. Constitution provides in pertinent part that "In all criminal prosecutions, the accused shall enjoy the right to . . . trial by impartial jury . . . ."

STATUTORY PROVISION INVOLVED

Title 8 U.S.C. § 1326 criminalizes unlawful reentry into the United States after removal. The text of the statute is attached to this petition as Appendix B.

STATEMENT

Petitioner Rafael Paredes was charged with unlawful reentry after removal in violation of 8 U.S.C. § 1326.[1] The indictment did not allege that Rafael had been convicted of a felony offense before his reentry into the United States. Appendix C. Unlawful reentry carries a maximum sentence of two years' imprisonment. 8 U.S.C. § 1326(a).

Rafael pleaded guilty to the reentry charge. The district court determined that Rafael had been convicted of aggravated robbery before his removal and reentry and that therefore the maximum sentence he faced was not two years imprisonment under § 1326(a), but twenty years' imprisonment under § 1326(b)(2). The court sentenced Rafael to 57 months' imprisonment. It also imposed a three-year term of supervised release, a length of supervision that was not available under § 1326(a).

Rafael appealed. He argued that his sentence was limited to two years of imprisonment and one year of supervised release because the indictment against him had failed to allege the maximum-sentence enhancing fact that he had a prior aggravated-felony conviction. The Fifth Circuit affirmed Rafael's sentence. It rejected

[1] The district court exercised jurisdiction under 18 U.S.C. § 3231.

his argument that his sentence exceeded the maximum sentence permitted under § 1326(a), ruling that the argument was foreclosed by the decision in *Almendarez-Torres v. United States,* 523 U.S. 224 (1998). Appendix A.

REASONS FOR GRANTING THE WRIT

THE COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER TO OVERRULE *ALMENDAREZ-TORRES V. UNITED STATES.*

Title 8 U.S.C. § 1326 criminalizes unlawful reentry into the United States by a person who has been removed from the country. Section § 1326(a) states that a person who reenters after removal may be punished by a sentence of up to two years of imprisonment. Section 1326(b)(1) increases the maximum sentence to 10 years of imprisonment if the reentering person had been removed after being convicted of a felony offense. Section 1326(b)(2) increases the maximum sentence further, to 20 years of imprisonment, if the reentering person had been removed after being convicted of an aggravated-felony offense. The finding of a prior felony or aggravated felony under § 1326(b) also increases a defendant's sentence by permitting the imposition of a three-year term of supervised release under § 3559 and § 3583(b)(2). A § 1326(a) offense carries only a one-year term of supervised release. 18 U.S.C. §§ 3559, 3583(b)(3).

In *Almendarez-Torres*, the Court construed 8 U.S.C. § 1326(b) as a statutory penalty-enhancement provision. 523 U.S. at 235. The Court further ruled that, when a penalty-enhancement provision is triggered by the existence of a prior conviction,

the prior conviction is not an element of the offense, even when the existence of the prior conviction increases the statutory-maximum penalty. *Id.* at 239–47.

Two years after these rulings, in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Court cast significant doubt on the constitutional reasoning it used in *Almendarez-Torres. Apprendi* explained that, under the Sixth Amendment, facts that increase the maximum sentence must be proved to a jury beyond a reasonable doubt. 530 U.S. at 490. The Court acknowledged that this general principle, which it found well-established in the "uniform course of decision during the entire history of our jurisprudence," conflicted with the specific holding of *Almendarez-Torres* that a prior conviction was not an element of a § 1326(b) offense. *Id.* at 489-90. The Court conceded it was "arguable that *Almendarez-Torres* was incorrectly decided, and that a logical application of our reasoning today should apply" to prior convictions as well. *Id.* at 489. But, because *Apprendi* did not involve a prior conviction and because neither litigants challenged *Almendarez-Torres*'s holding, the Court declined to overrule it. *Id.* at 490. Instead, *Apprendi* framed its holding to leave *Almendarez-Torres* as an outlier: "*Other than the fact of a prior conviction*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." *Id.* (emphasis added).

Since then both the Court's opinions and the opinions of individual justices have repeatedly questioned *Almendarez-Torres* and suggested that its holding should be revisited. *See, e.g., Alleyne v. United States*, 570 U.S. 99, 111 n.1 (2013); *Sessions v. Dimaya*, 138 S. Ct. 1204, 1253 (2018) (Thomas, J., dissenting) (*Almendarez- Torres*

should be reconsidered); *Descamps v. United States*, 570 U.S. 254, 281 (2013) (Thomas, J., concurring) (same).

Alleyne applied *Apprendi*'s rule to mandatory-minimum sentences. It held that any fact that produces a higher sentencing range—not just a sentence above the mandatory maximum—must be alleged in a federal indictment and proved to a jury beyond a reasonable doubt. 570 U.S. at 114–16. In its opinion, the Court recognized that *Almendarez-Torres*'s constitutional holding poses potential Fifth and Sixth Amendment susceptibilities. *Alleyne* characterized *Almendarez-Torres* as a "narrow exception to the general rule" that all facts that increase punishment must be alleged in the indictment and proved to a jury beyond a reasonable doubt. *Id.* at 111 n.1. But because, as in *Apprendi,* the parties in *Alleyne* did not challenge *Almendarez- Torres*, the Court said that it would "not revisit [that decision] for purposes of our decision today." *Id.*

Alleyne's reasoning, however, provides support for a challenge to *Almendarez-Torres*'s continued existence. *Alleyne* traced the treatment of the relationship between crime and punishment back to the eighteenth century, noting the consistent and "intimate connection between crime and punishment" and the "linkage of facts with particular sentence ranges[.]" 570 U.S. at 109. The Court observed that crimes were defined historically as "the whole of the wrong to which the law affixes punishment . . . includ[ing] any fact that annexes a higher degree of punishment[.]" *Id.* at 109. The Court pointed to authorities teaching that "the indictment must contain an allegation of every fact which is legally essential to the punishment to be

inflicted[.]") *Id.* (quoting 1 J. Bishop, Criminal Procedure 50 (2d ed. 1872)). The Court concluded that, because "the whole of the" crime and its punishment cannot be separated, the elements of a crime necessarily include any facts that increase the penalty. *Id.* at 109, 114–15.

Alleyne's explanation that the elements of a crime include the "whole" of the facts for which a defendant is punished seriously undercuts the view, expressed in *Almendarez-Torres*, *see* 523 U.S. at 243–44, that recidivism differs from other sentencing facts. *Alleyne* thus joined *Apprendi, Shepard v. United States*, 544 U.S. 13, 26 n.5 (2005), and *Cunningham v. California*, 549 U.S. 270, 291 n.14 (2007), in calling *Almendarez-Torres* into question. Justice Thomas has long stated that overruling *Almendarez-Torres* is necessary to prevent injustice. *See, e.g., Rangel-Reyes v. United States,* 547 U.S. 1200, 1203 (2006) (Thomas, J., dissenting from denial of certiorari). The concurring justices in *Alleyne* appeared to join that view when they observed that that *Apprendi* principle's firm historical basis made precedent irreconcilable with that principle subject to reevaluation. *Alleyne,* 570 U.S. at 118-121 (Sotomayor, Ginsburg, Kagan, J.J., concurring).

The most recent statements by the Court suggesting that *Almendarez-Torres* needs to be revisited came in *Erlinger v. United States,* 144 S. Ct. 1840 (2024). In *Erlinger,* the Court held that a judge could not increase a defendant's sentence through its own finding that his prior offenses occurred on separate occasions. 144 S. Ct. at 1850-53. The Court again stated that *Almendarez-Torres* rested on a shaky constitutional foundation, but again noted that overruling *Almendarez-Torres* was

not need to resolve the issues raised by the parties. 144 S. Ct. at 1850-54. Justice Thomas wrote separately to again state "my view that we should revisit *Almendarez-Torres* and correct" its error. 144 S. Ct. at 1861 (Thomas, J., concurring).

The recurring view among members of this Court that *Almendarez-Torres* was wrongly decided provides good reason to revisit that decision. Stare decisis "is at its weakest" when the Court interprets the Constitution. *Agostini v. Felton*, 521 U.S. 203, 235 (1997); *see also Seminole Tribe v. Florida*, 517 U.S. 44, 63 (1996). When "there has been a significant change in, or subsequent development of, our constitutional law," stare decisis "does not prevent . . . overruling a previous decision." *Agostini*, 521 U.S. at 236. Even if the Court were ultimately to reaffirm *Almendarez-Torres*, review is warranted. While lower court judges—as well as prosecutors, defense counsel, and criminal defendants— are forced to rely on the decision, they must speculate, and continue to litigate, about the ultimate validity of the Court's holding. "There is no good reason to allow such a state of affairs to persist." *Rangel-Reyes*, 547 U.S. at 1201 (2006) (Thomas, J., dissenting from denial of certiorari).

Petitioner Paredes's case squarely presents the *Almendarez-Torres* question. Paredes was convicted and had his sentence enhanced by the district court under the same statute as Almendarez-Torres's sentence was enhanced. History and the Court's post-*Apprendi* jurisprudence strongly suggest that the increase to Paredes's sentence through judicial fact-findings violated the Fifth and Sixth Amendments. The Court should grant certiorari to determine whether *Almendarez-Torres* is still the law or

whether it must yield to the principle that all facts that raise the maximum sentence are elements of the offense and thus must be included in the indictment and found by a jury.

Conclusion

FOR THESE REASONS, Petitioner asks that the Court grant a writ of certiorari and review the judgment of the court of appeals.

/s/ PHILIP J. LYNCH
Counsel of Record for Petitioner

DATED: January 10, 2025.