No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

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JUAN ALBERTO MURIA-PALACIOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____

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

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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APPENDIX TABLE OF CONTENTS i

FILED

OCT 17 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JUAN ALBERTO MURIA-PALACIOS, Defendant - Appellant.	No. 24-2578 D.C. No. 2:21-cr-00023-JAM-1 Eastern District of California, Sacramento ORDER

Before: SILVERMAN, R. NELSON, and MILLER, Circuit Judges.

The motion (Docket Entry No. 11) for initial hearing en banc is denied. *See* 9th Cir. Gen. Ord. 5.2.

The motion (Docket Entry No. 12) for summary affirmance is granted. A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard); *see also United States v. Carrillo-Lopez*, 68 F.4th 1133 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 703 (2024).

AFFIRMED.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JUAN ALBERTO MURIA-PALACIOS, Defendant.	No. 2:21-cr-00023-JAM **ORDER DENYING DEFENDANT'S MOTION TO DISMISS**

On November 29, 2021, Defendant filed a motion to dismiss the indictment for violation of 8 U.S.C. Sections 1326(a) and 1326(b)(2). See Mot. to Dismiss ("Mot."), ECF No. 33. Defendant contends 8 U.S.C. Section 1326 is unconstitutional under Village of Arlington Heights v. Metro. Housing Development Corp., 429 U.S. 252 (1977) ("Arlington Heights") because "the original entry and reentry laws were enacted with a discriminatory purpose and still have a disparate impact" on Latinx individuals. Mot. at 2. The Government opposed Defendant's motion. See Opp'n, ECF No. 36. For the reasons discussed below, the Court DENIES Defendant's motion.[1]

[1] The Court acknowledges Defendant's request for an evidentiary hearing, see Mot. at 3, but determined this motion was suitable for decision without one. E.D. Cal. L.R. 430.1(h).

I. BACKGROUND

Section 1326(a) makes it a crime when any alien who "has been denied admission, excluded, deported, or removed . . . thereafter enters, attempts to enter, or is at any time found in, the United States" without appropriate authorization. 8 U.S.C. § 1326(a). Section 1326(b)(2) provides that any alien "whose removal was subsequent to a conviction for commission of an aggravated felony" shall be subject to criminal penalties for reentry. Id. § 1326(b)(2).

On January 28, 2021, Defendant was charged with being a previously deported alien found in the United States in violation of 8 U.S.C. Sections 1326(a) and 1326(b)(2). See Indict., ECF No. 4. Specifically, the indictment charges that Defendant is an alien who was removed from the United States on or about February 6, 2014, following a conviction for assault with a firearm; and after he was removed, he was subsequently found in the United States without authorization on or about September 10, 2020. Id. at 1-2. Defendant now moves for dismissal of the indictment. See generally Mot.

II. OPINION

Pointing to evidence that racism motivated Congress to criminalize reentry and that Section 1326 continues to disparately impact Latinx individuals, Defendant argues this statute violates the Equal Protection Clause of the Fifth Amendment. Mot. at 3-21.

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Around the country, district courts have addressed identical constitutional challenges to Section 1326. See, e.g. United States v. Cortez-Mendoza, NO: 2:20-CR-131-RMP-1, 2022 WL 706917 (E.D. Wash. March 8, 2022); United States v. Munoz-De La O, NO: 2:20-CR-134-RMP-1, 2022 WL 508892 (E.D. Wash. Feb. 18, 2022); United States v. Ponce-Galvan, Case No. 21-cr-02227-H-1, 2022 WL 484990 (S.D. Cal. Feb. 16, 2022); United States v. Hernandez-Lopez, Criminal No. H-21-440, 2022 WL 313774 (S.D. Tex. Feb. 2, 2022); United States v. Sanchez-Felix, No. 21-cr-00310-PAB, 2021 WL 6125407 (D. Colo. Dec. 28, 2021); United States v. Suquilanda, 21 CR 263 (VM), 2021 WL 4895956 (S.D. N.Y. Oct. 20, 2021); United States v. Zepeda, Case No. CR 20-0057 FMO, 2021 WL 4998418 (C.D. Cal. Jan 5, 2021).[2] Of the many district courts that have addressed these challenges, only one found that Section 1326 does not pass constitutional muster and granted defendant's motion to dismiss the indictment. See United States v. Carrillo-Lopez, Case No. 3:20-cr-00026-MMD-WGC, 2021 WL 3667330 (D. Nev. Aug. 18, 2021).

After careful review of the parties' briefs and supporting documents along with the other available district court opinions, this Court joins the nearly uniform weight of authority in finding that Section 1326 survives constitutional review. Accord Suquilanda, 2021 WL 4895956, at *5 (noting the Carillo-Lopez "opinion appears to be a somewhat of an outlier, as . . . the vast majority of courts that have considered this exact issue have upheld Section 1326."). This is so regardless

[2] The parties have not brought forward nor is the Court aware of any Circuit Court that has addressed this issue.

of which standard of review the Court applies to Defendant's challenge.[3]

The Government contends "the same rational-basis standard of review applicable to other federal immigration laws" applies. Opp'n at 4-7. Under rational basis review, Section 1326 clearly survives because deterring illegal immigration is a legitimate, rational government purpose directly advanced by the statute. Id. at 7-8. Defendant does not attempt to argue otherwise in his motion. See generally Mot.

Instead, Defendant's argument hinges upon the Court applying the more demanding Arlington Heights standard. Mot. at 3-6. Under Arlington Heights, proof of a racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause. Ramos v. Wolf, 975 F.3d 872, 896 (9th Cir. 2020). "However, a [party] asserting an equal protection claim need not 'prove that the challenged action rested solely on racially discriminatory purposes' or even that racial discrimination was the 'dominant' or 'primary' purpose." Id. What is required is a showing that racial discrimination was at least a "motivating factor." Id. To determine whether racial discrimination was a "motivating factor," courts consider the following factors: the "impact of the official action" and whether it "bears more heavily on one race than another"; the "historical background of the decision"

[3] The district courts that have addressed this issue are split as to which standard applies. Compare United States v. Gutierrez-Barba, No. CR-19-01224-001-PHX-DJH, 2021 WL 2138801, at *5 (D. Ariz. May 25, 2021) (applying rational basis review) and United States v. Machic-Xiap, Case No. 3:19-cr-407-SI, 2021 WL 3362738, at *10 (applying Arlington Heights framework).

and whether it "reveals a series of official actions taken for invidious purposes"; the "specific sequence of events leading up the challenged decision" and whether it departs procedurally or substantively from normal practice; and the "legislative or administrative history" and what it reveals about the purpose of the official action. Id.

Defendant's motion marches through these factors. See Mot. at 6-17. What Defendant fails to provide, however, is a link between the legislative history of the 1929 Undesirable Aliens Act and the 1952 reenactment of Section 1326. Opp'n at 10-11. Yet, "Arlington Heights directs the Court to look at the motivation behind the official action being challenged" and here the official action being challenged is Section 1326 codified in the 1952 Immigration and Nationality Act ("INA") not the repealed 1929 Act. See Ponce Galvin, 2022 WL 484990, at *3. To argue the 1929 Act's history is relevant to a determination of the constitutionality of Section 1326, Defendant relies on Ramos v. Louisiana, 140 S. Ct. 1390 (2020) and Espinoza v. Montana Dep't of Revenue, 140 S.Ct. 2246 (2020). Mot. at 17-18. But as other courts have found, Ramos and Espinoza do not support the contention that the challenged law "should be judged according to legislative history from laws enacted decades before." Ponce Galvin, 2022 WL 484990, at *2; see also Zepeda, 2021 WL 4998418, at *3 ("[T]he court is unpersuaded that Ramos and Espinoza support defendant's contention that Section 1326 should be judged according to legislative history from laws enacted decades earlier."). Significantly, Ramos and Espinoza did not involve an equal

protection challenge under Arlington Heights and are thus readily distinguishable. Opp'n at 12-13. In short, neither Ramos nor Espinoza held that discriminatory motivations of a previous legislature determine the outcome of an Arlington Heights analysis of a law enacted by a subsequent legislature. Defendant's argument that the legislative history of the repealed 1929 Act is controlling and later reenactments do not cleanse the law of its original taint thus fails. Opp'n at 13; see also United States v. Sifuentes-Felix, No. 21-cr-337-WJM, 2022 WL 293228, at *2 ("As countless other courts have found, such evidence bears little weight on Section 1326, which was officially reenacted as a felony offense in 1952 as part of the broader INA."). Accordingly, Defendant's equal protection challenge fails under Arlington Heights too. Accord Ponce Galvin, 2022 WL 484990, at *3 (finding Plaintiff's equal protection claim fails under Arlington Heights); Zepeda, 2021 WL 4998418, at *3 (same).

III. ORDER

For the reasons set forth above, the Court DENIES Defendant's motion to dismiss.

IT IS SO ORDERED.

Dated: March 29, 2022

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

Title 8 United States Code § 1326. Reentry of removed aliens

(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 or any prior Act, shall be fined under title 18, United States Code, 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, United States Code, 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 235(c) [8 USCS § 1225(c)] because the alien was excludable under section 212(a)(3)(B) [8 USCS § 1182(a)(3)(B)] or who has been removed from the United States pursuant to the provisions of title V [8 USCS §§ 1531 et seq.], 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, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.[;] or

(4) who was removed from the United States pursuant to section 241(a)(4)(B) [8 USCS § 1231(a)(4)(B)] who thereafter, without the permission of the Attorney General, has expressly consented to such alien's reentry) shall be fined under title 18,

United States Code, 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.