

United States Court of Appeals  
for the Fifth Circuit

---

No. 24-10597  
Summary Calendar

---

United States Court of Appeals  
Fifth Circuit

**FILED**

March 14, 2025

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ELEAZAR DIAZ-BALLEZA,

*Defendant—Appellant.*

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:24-CR-49-1

---

Before WIENER, HO, and RAMIREZ, *Circuit Judges.*

PER CURIAM:\*

Defendant-Appellant Eleazar Diaz-Balleza was convicted of illegal reentry after deportation in violation of 8 U.S.C. § 1326(a) and (b)(1). He was sentenced to 18 months of imprisonment and three years of supervised release.

---

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

No. 24-10597

Diaz-Balleza claims that the district court procedurally erred in imposing the sentence by relying on erroneous facts. He fails to show that all four prongs of the plain error standard are met. We thus decline to correct the alleged error. *See United States v. Coto-Mendoza*, 986 F.3d 583, 585-86 (5th Cir. 2021); *United States v. Caravayo*, 809 F.3d 269, 273 (5th Cir. 2015).

He next contends that § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. As he correctly concedes, this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019); *see also Erlinger v. United States*, 602 U.S. 821, 838 (2024) (explaining that *Almendarez-Torres* “persists as a narrow exception permitting judges to find only the fact of a prior conviction” (internal quotation marks and citation omitted)).

AFFIRMED.

CTJ-P

APPENDIX B

Case 4:24-cr-00049-P Document 9 Filed 02/28/24 Page 1 of 2 PageID 9

FEB 28 2024 AM 10:29  
FILED - USDC - NDTX - FW

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

UNITED STATES OF AMERICA

v.

No. 4:24-CR-49-P

ELEAZAR DIAZ-BALLEZA (01)

INFORMATION

The United States Attorney Charges:


Count One

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

On or about January 31, 2024, in the Fort Worth Division of the Northern District of Texas, defendant **Eleazar Diaz-Balleza**, an alien, was found in the United States having previously been deported and removed from the United States on or about November 20, 2019, 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.

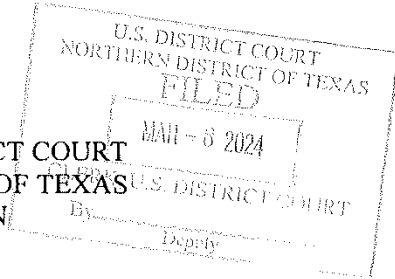
In violation of 8 U.S.C. § 1326(a) and (b)(1).

LEIGHA SIMONTON  
UNITED STATES ATTORNEY

  
\_\_\_\_\_  
JUSTIN BECK  
Assistant United States Attorney  
Texas State Bar No. 24133053  
801 Cherry Street, Unit #4  
Fort Worth, TX 76102  
Tel: (817) 252-5200  
Fax: (817) 252-5455  
Email: justin.beck@usdoj.gov

ORIGINAL

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



UNITED STATES OF AMERICA

v.

No. 4:24-CR-00049-P

ELEAZAR DIAZ-BALLEZA (01)

**FACTUAL RESUME**

I. Plea:

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

II. Maximum Penalties:

The maximum penalties the Court can impose include:

- a. a term of imprisonment of ten (10) years;
- b. a fine of \$250,000;
- c. a term of supervised release of three (3) years. If the defendant violates the conditions of supervised release, he could be imprisoned for an additional period of confinement;
- d. a mandatory special assessment of \$100; and
- e. 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.

24-10597.20

III. Essential Elements of the Offense:

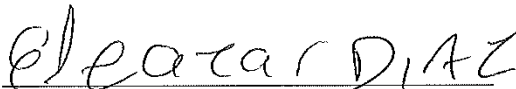
In order to establish the offense alleged in Count One, the government must prove the following elements beyond a reasonable doubt:

- 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.

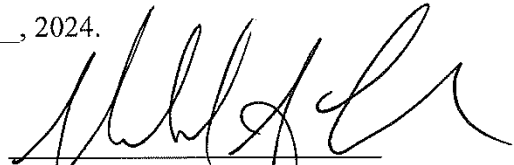
IV. Stipulation of Facts:

Eleazar Diaz-Balleza (Diaz) is a citizen and national of Mexico. On November 20, 2019, Diaz was deported and removed to Mexico through Laredo, Texas. On January 31, 2024, Diaz was encountered by immigration authorities at the Haltom City Jail, Haltom City, Texas, within the Federal Northern District of Texas. Diaz 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 23 day of FEBRUARY, 2024.



ELEAZAR DIAZ-BALLEZA  
Defendant



MICHAEL A. LEHMANN  
Attorney for Defendant

24-10597.21

**APPENDIX D**

Case 4:24-cr-00049-P Document 30 Filed 06/28/24 Page 1 of 5 PageID 61

**UNITED STATES DISTRICT COURT**

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

v.

ELEAZAR DIAZ-BALLEZA

Case Number: 4:24-CR-00049-P(01)

U.S. Marshal's No.: 99164-510

Justin Beck, Assistant U.S. Attorney

Michael Lehmann, Attorney for the Defendant

On March 6, 2024 the defendant, ELEAZAR DIAZ-BALLEZA, entered a plea of guilty as to Count One of the Information filed on February 28, 2024. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326(a) and (b)(1)	Illegal Reentry After Deportation	January 2024	One

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Information filed on February 28, 2024.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed June 27, 2024.



MARK T. PITTMAN  
U.S. DISTRICT JUDGE

Signed June 28, 2024.

Judgment in a Criminal Case  
Defendant: ELEAZAR DIAZ-BALLEZA  
Case Number: 4:24-CR-00049-P(1)

Page 2 of 5

### IMPRISONMENT

The defendant, ELEAZAR DIAZ-BALLEZA, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Eighteen (18) months** as to Count One of the Information filed on February 28, 2024. This sentence shall run consecutively to any future sentence in Case No. 1812336 in the 297<sup>th</sup> District Court of Tarrant County, TX as it is unrelated to the instant offense.

The defendant is remanded to the custody of the United States Marshal.

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Three (3) years** as to Count One of the Information filed on February 28, 2024.

As a condition of supervised release, 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 USC § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions contained in the Judgment and shall comply with the mandatory and special conditions stated herein:

- 1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame;
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed;
- 3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer;
- 4) The defendant shall answer truthfully the questions asked by the probation officer;
- 5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;

24-10597.37



Judgment in a Criminal Case

Page 3 of 5

Defendant: ELEAZAR DIAZ-BALLEZA

Case Number: 4:24-CR-00049-P(1)

- 6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observed in plain view;
- 7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her employment (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer;
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours;
- 10) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed , or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers);
- 11) The defendant shall not act or make an agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court;
- 12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk; and,
- 13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

In addition the defendant shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapon;
- cooperate in the collection of DNA as directed by the U.S. probation officer;

24-10597.38

Judgment in a Criminal Case  
Defendant: ELEAZAR DIAZ-BALLEZA  
Case Number: 4:24-CR-00049-P(1)

Page 4 of 5

submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court;

pay the assessment imposed in accordance with 18 U.S.C. § 3013;

shall not illegally re-enter the United States, if deported, removed, or allowed voluntary departure; and,

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

#### **FINE/RESTITUTION**

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case  
Defendant: ELEAZAR DIAZ-BALLEZA  
Case Number: 4:24-CR-00049-P(1)

Page 5 of 5

**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 Marshal