

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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JOSE REYES RAMIREZ-ZERMENO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

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/s/ Christy Posnett Martin

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INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit, CA No. 24-10606, *United States v. Ramirez-Zermenio*, 2025 WL 303074 (5<sup>th</sup> Cir. Jan. 27, 2025)(unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered June 14, 2024.  
*United States v. Ramirez-Zermenio*, Dist. Court 3:24-cr-032.

Appendix C Indictment

## APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

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No. 24-10606  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 27, 2025

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOSE REYES RAMIREZ-ZERMENO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:24-CR-32-1

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Before ELROD, *Chief Judge*, and HAYNES, and DUNCAN, *Circuit Judges*.

PER CURIAM:\*

Jose Reyes Ramirez-Zermenno appeals following his conviction for illegal reentry in violation of 8 U.S.C. § 1326(a), arguing for the first time on appeal that the statutory sentencing enhancement in § 1326(b) is unconstitutional. He concedes this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and the Government has filed an

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

No. 24-10606

unopposed motion for summary affirmance or, alternatively, for an extension of time in which to file a brief.

The argument is foreclosed. *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)). Therefore, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the motion for summary affirmance is GRANTED, the alternative motion for an extension of time is DENIED, and the judgment of the district court is AFFIRMED.

## APPENDIX B

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

**JOSE REYES RAMIREZ-ZERMENO****JUDGMENT IN A CRIMINAL CASE**

§

§

§

Case Number: **3:24-CR-00032-N(1)**USM Number: **83009-279****Laura S Harper**

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.	<b>Count 1 of the Indictment filed February 6, 2024.</b>
<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:

<b>Title &amp; Section / Nature of Offense</b>	<b>Offense Ended</b>	<b>Count</b>
8 U.S.C. § 1326(a) Illegal Reentry After Removal from the United States	07/08/2023	1

The defendant is sentenced as provided in pages 2 through 7 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.

**JUNE 10, 2024**

Date of Imposition of Judgment



Signature of Judge

**DAVID C. GODBEY,  
CHIEF UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

**JUNE 14, 2024**

Date

DEFENDANT: JOSE REYES RAMIREZ-ZERMENO  
CASE NUMBER: 3:24-CR-00032-N(1)

## IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

**21 (Twenty-One) months as to count 1.**

The court makes the following recommendations to the Bureau of Prisons:

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: JOSE REYES RAMIREZ-ZERMENO  
CASE NUMBER: 3:24-CR-00032-N(1)

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Three (3) years as to Count 1.**

## MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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.  
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: JOSE REYES RAMIREZ-ZERMENO  
CASE NUMBER: 3:24-CR-00032-N(1)

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must 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. You must not act or make any 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 you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at [www.txnp.uscourts.gov](http://www.txnp.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: JOSE REYES RAMIREZ-ZERMENO  
CASE NUMBER: 3:24-CR-00032-N(1)

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall not illegally re-enter the United States, if deported, removed, or allowed voluntary departure.

Pursuant to 18 U.S.C. § 3583(d), as a condition of supervised release, upon completion of the sentence of imprisonment, the defendant shall be surrendered by the Federal Bureau of Prisons 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. As a condition of supervised release, if ordered deported or removed, the defendant shall remain outside of the United States.

DEFENDANT: JOSE REYES RAMIREZ-ZERMENO  
 CASE NUMBER: 3:24-CR-00032-N(1)

## CRIMINAL MONETARY PENALTIES

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

	<b>Assessment</b>	<b>Restitution</b>	<b>Fine</b>	<b>AVAA Assessment*</b>	<b>JVTA Assessment**</b>
<b>TOTALS</b>	\$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: JOSE REYES RAMIREZ-ZERMENO  
 CASE NUMBER: 3:24-CR-00032-N(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 \_\_\_\_\_, 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 20 (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.

## APPENDIX C

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

JOSE REYES RAMIREZ-ZERMENO  
a/k/a Jose Ramirez Reyes

NO. 3 - 24 CR-032-N

**INDICTMENT**

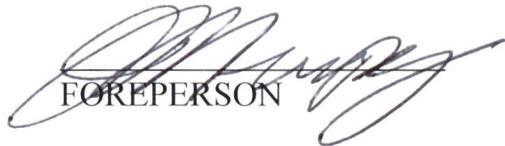
The Grand Jury charges:

Count One  
Illegal Reentry After Removal from the United States  
(Violation of 8 U.S.C. § 1326(a))

On or about July 8, 2023, in the Dallas Division of the Northern District of Texas, the defendant, **Jose Reyes Ramirez-Zermeno**, an alien, was found in the United States after having been deported and removed therefrom on or about January 31, 2018, without having received the express consent of the United States Attorney General or the Secretary of the Department of Homeland Security to reapply for admission since the time of the defendant's previous deportation and removal.

In violation of 8 U.S.C. § 1326(a), the penalty for which is found at 8 U.S.C. § 1326(b)(1).

A TRUE BILL:



Leigha Simonton

FOREPERSON

LEIGHA SIMONTON  
UNITED STATES ATTORNEY

Marissa Aulbaugh  
MARISSA AULBAUGH  
Assistant United States Attorney  
Texas Bar No. 24084051  
1100 Commerce Street, Third Floor  
Dallas, Texas 75242  
Tel: 214-659-8760  
Fax: 214-659-8773  
Email: marissa.aulbaugh@usdoj.gov

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

---

THE UNITED STATES OF AMERICA

v.

JOSE REYES RAMIREZ-ZERMENO

---

INDICTMENT

8 U.S.C. § 1326(a)  
Illegal Reentry After Removal from the United States  
(Count 1)

1 Count

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A true bill rendered

DALLAS

FOREPERSON

Filed in open court this 6<sup>th</sup> day of February, 2024.

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Defendant in Federal Custody since 1/17/2024

UNITED STATES MAGISTRATE JUDGE  
Magistrate Court Number: 3:24-MJ-30-BK