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NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Argued December 16, 2025

Decided December 31, 2025

BeforeMICHAEL B. BRENNAN, *Chief Judge*DIANE S. SYKES, *Circuit Judge*REBECCA TAIBLESON, *Circuit Judge*

No. 24-3319

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*JUAN IBARRA-GARCIA,
*Defendant-Appellant.*Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:23-CR-00272(1)

Andrea R. Wood,
*Judge.***ORDER**

Juan Ibarra-Garcia pleaded guilty to illegally reentering the United States as a previously removed noncitizen and was sentenced to 46 months' imprisonment. On appeal, he argues that his sentence exceeded the statutory maximum. Because precedent forecloses Ibarra-Garcia's argument, we affirm.

Ibarra-Garcia, a Mexican citizen, was present in the United States in May 2018 without authorization. He previously entered the United States and was removed on four separate occasions between 1992 and 2011.

Ibarra-Garcia was charged with one count of reentry of a removed immigrant under 8 U.S.C. § 1326. The indictment cited § 1326(a), which prohibits the entry of an immigrant who has been removed and carries a statutory maximum penalty of 2 years' imprisonment. It also cited § 1326(b)(2), which allows for a penalty of up to 20 years' imprisonment for an immigrant whose removal followed a conviction for an aggravated felony. The indictment did not cite § 1326(b)(1), which allows for a penalty of up to 10 years' imprisonment for an immigrant whose removal followed convictions for three or more misdemeanors or a non-aggravated felony. Ibarra-Garcia pleaded guilty.

During the sentencing hearing, the district judge heard argument on the applicable statutory maximum term of imprisonment. The parties agreed that § 1326(b)(2), the criminal penalty provision for a prior aggravated felony, did not apply. And Ibarra-Garcia did not contest that he had a qualifying non-aggravated felony under § 1326(b)(1). But he argued that § 1326(b)(1)'s 10-year statutory maximum did not apply because it was not charged in the indictment. Instead, he asserted, the statutory maximum was 2 years' imprisonment as specified in § 1326(a), which was charged in the indictment. The government argued that the 10-year statutory maximum in § 1326(b)(1) applied, even though it was not charged in the indictment.

The district judge agreed with the government that the applicable statutory maximum was 10 years. She determined that Ibarra-Garcia's guidelines range was 46 to 57 months, which did not need to be adjusted based on the statutory maximum. She imposed 46 months' imprisonment.

On appeal, Ibarra-Garcia maintains that his sentence exceeded the statutory maximum of 2 years under § 1326(a). He contends that because § 1326(b)(1) was not charged in his indictment, its 10-year statutory maximum did not apply. But he recognizes that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). He therefore seeks only to preserve his argument for review by the Supreme Court.

In *Almendarez-Torres*, the Supreme Court held that subsection (b) of § 1326 merely authorizes an enhanced penalty for immigrants with a prior conviction and is not a separate crime from subsection (a). 523 U.S. at 231–32, 235. Because it is a penalty provision, not a separate crime, it does not need to be charged in the indictment. *Id.* at 226–27. *Almendarez-Torres* remains binding precedent. See *Erlinger v. United States*, 602 U.S. 821, 838 (2024). Accordingly, we must continue to apply the rule stated in *Almendarez-Torres*. See *United States v. Bock*, 312 F.3d 829, 831–32 (7th Cir. 2002) (“It is not

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out of the question that the issue might be reexamined by the Supreme Court. But that is not for us to say, nor is it for us today to predict which direction any reexamination might take.”). By pressing this argument on appeal, Ibarra-Garcia has preserved it for further review.

AFFIRMED

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Unconstitutional or Preempted Limitation Recognized by United States v. Gonzalez-Fierro, 10th Cir.(N.M.), Feb. 04, 2020



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Proposed Legislation

United States Code Annotated
Title 8. Aliens and Nationality (Refs & Annos)
Chapter 12. Immigration and Nationality (Refs & Annos)
Subchapter II. Immigration
Part VIII. General Penalty Provisions

8 U.S.C.A. § 1326

§ 1326. Reentry of removed aliens

Effective: September 30, 1996

Currentness

(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 chapter or any prior Act,

shall be fined under Title 18, 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, 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 1225(c) of this title because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of subchapter V, 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 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.¹ or

(4) who was removed from the United States pursuant to section 1231(a)(4)(B) of this title who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under Title 18, 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.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to section 1252(h)(2)² of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that--

(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

(3) the entry of the order was fundamentally unfair.

CREDIT(S)

(June 27, 1952, c. 477, Title II, ch. 8, § 276, 66 Stat. 229; Pub.L. 100-690, Title VII, § 7345(a), Nov. 18, 1988, 102 Stat. 4471; Pub.L. 101-649, Title V, § 543(b)(3), Nov. 29, 1990, 104 Stat. 5059; Pub.L. 103-322, Title XIII, § 130001(b), Sept. 13, 1994, 108 Stat. 2023; Pub.L. 104-132, Title IV, §§ 401(c), 438(b), 441(a), Apr. 24, 1996, 110 Stat. 1267, 1276, 1279; Pub.L. 104-208, Div. C, Title III, §§ 305(b), 308(d)(4)(J), (e)(1)(K), (14)(A), 324(a), (b), Sept. 30, 1996, 110 Stat. 3009-606, 3009-618 to 3009-620, 3009-629.)