

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

---

---

In the Supreme Court of the United States

\_\_\_\_\_  
**Joel Zavala-Garcia,**  
*Petitioner,*

v.

**United States of America,**  
*Respondent*

---

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

---

PETITION FOR A WRIT OF CERTIORARI

---

Christy Martin  
*Assistant Federal Public Defender*  
Northern District of Texas  
525 S. Griffin Street, Suite 629  
Dallas, TX 75202  
(214) 767-2746  
Christy\_Martin@fd.org

---

---

## QUESTION PRESENTED

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

## LIST OF PARTIES

Joel Zavala-Garcia, petitioner on review, was the Defendant-Appellant below. The United States of America, respondent on review, was Plaintiff-Appellee. No party is a corporation.

## RELATED PROCEEDINGS

- *United States v. Zavala-Garcia*, No. 5:25-CR-00061, U.S. District Court for the Northern District of Texas. Judgment entered on July 31, 2025.
- *United States v. Zavala-Garcia*, No. 25-10895, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on January 14, 2026.

## TABLE OF CONTENTS

QUESTION PRESENTED .....	i
LIST OF PARTIES .....	i
RELATED PROCEEDINGS.....	i
INDEX TO APPENDICES .....	iii
TABLE OF AUTHORITIES .....	iv
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW .....	1
JURISDICTION.....	1
RELEVANT PROVISIONS .....	1
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THIS PETITION.....	3
The decision in <i>Erlinger v. United States</i> shows that <i>Almendarez-Torres</i> can no longer be reconciled with <i>Apprendi</i> . Only this Court can finally resolve the inconsistency by overruling <i>Almendarez-Torres</i> . .....	3
CONCLUSION.....	9

## INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit (Pet.App.A)

Appendix B Judgment and Sentence of the United States District Court for the  
Northern District of Texas (Pet.App.B)

Appendix C Indictment (Pet.App.C)

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Almendarez-Torres v. United States</i> , 523 U.S. 224 (1998) .....	3, 4, 5, 6, 7, 8
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000) .....	3, 4, 6, 7, 8
<i>Descamps v. United States</i> , 570 U.S. 254 (2013) .....	5, 7
<i>Dretke v. Haley</i> , 541 U.S. 386 (2005) .....	3
<i>Erlinger v. United States</i> , 602 U.S. 821 (2024) .....	3, 4, 5, 6, 8, 9
<i>Graham v. W. Virginia</i> , 224 U.S. 616 (1912) .....	6
<i>Johnson v. United States</i> , 576 U.S. 591 (2015) .....	8
<i>Mathis v. United States</i> , 579 U.S. 500 (2016) .....	5, 7
<i>Rodriguez de Quijas v. Shearson/Am. Exp., Inc.</i> , 490 U.S. 477 (1989) .....	8
<i>Sessions v. Dimaya</i> , 584 U.S. 148 (2018) .....	8
<i>Shepard v. United States</i> , 544 U.S. 1 (2005) .....	7
<i>Taylor v. United States</i> , 495 U.S. 570 (1991) .....	7
<i>United States v. Davis</i> , 588 U.S. 445 (2019) .....	8

*United States v. Lewis*,  
720 F. App'x 111 (3d Cir. 2018)(unpublished)(Roth, J., concurring)..... 8

*Wooden v. United States*,  
595 U.S. 360 (2022) ..... 4, 5

**Statutes**

8 U.S.C. § 1326..... 1, 4, 6, 8

8 U.S.C. § 1326(a) ..... 2

8 U.S.C. § 1326(b) ..... 1, 3, 4

8 U.S.C. § 1326(b)(1) ..... 2, 4

8 U.S.C. § 1326(b)(2) ..... 4

18 U.S.C. § 16..... 8

18 U.S.C. § 924(c)..... 8

18 U.S.C. § 924(e)..... 4

18 U.S.C. § 3559(e)..... 2

18 U.S.C. § 3583(b) ..... 2

28 U.S.C. § 1254(1) ..... 1

**Constitutional Provisions**

U.S. CONST., amend. VI ..... 1, 3, 4, 7

**Other Authorities**

15 *Papers of Thomas Jefferson* 266 (J. Boyd ed. 1958) ..... 6

## **PETITION FOR A WRIT OF CERTIORARI**

Joel Zavala-Garcia respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

### **OPINIONS BELOW**

The Fifth Circuit's unreported opinion is available on Westlaw's electronic database at 2026 WL 103742 and reprinted at Pet.App.A.

### **JURISDICTION**

The Court of Appeals issued its panel opinion on January 14, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

### **RELEVANT PROVISIONS**

This Petition involves a penalty provision found in 8 U.S.C. § 1326:

(b) 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;

8 U.S.C. § 1326(b). This petition also involves the Notice Clause of the

Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right . . .  
to be informed of the nature and cause of the accusation.

U.S. CONST., amend. VI.

## STATEMENT OF THE CASE

### A. Facts and District Court Proceedings

Petitioner Joel Zavala-Garcia entered an open plea of guilty to an indictment charging illegal reentry after deportation in violation of 8 U.S.C. § 1326(a). The statutes governing this offense set a default maximum of two-years imprisonment and one-year supervised release. *See* 8 U.S.C. § 1326(a), 18 U.S.C. §§ 3559(e) and 3583(b). But based on a prior conviction, the district court applied a 10-year maximum term of imprisonment and a three-year maximum term of supervised release instead. *See* 8 U.S.C. § 1326(b)(1); 18 U.S.C. §§ 3559(e), and 3583(b); Pet.App.C. This alternative applies “in the case of any alien . . . removal was subsequent to a conviction for commission of . . . a felony.” 8 U.S.C. § 1326(b)(1). Mr. Zavala-Garcia’s indictment did not allege his prior commission of a felony. Pet.App.C. The district court imposed a sentence of 24 months’ imprisonment and three years’ supervised release. Pet.App.B.

### B. Proceedings on Appeal

Mr. Zavala-Garcia argued on appeal that the district court erred in imposing a supervised release term in excess of one year. He noted that although the enhanced maximum term of supervised release depended on a prior conviction, he was not charged and had not admitted it, and no jury had ever found it beyond a reasonable doubt. A three-judge panel affirmed on January 14, 2026. *See* Pet.App.A.

## REASONS FOR GRANTING THIS PETITION

**The decision in *Erlinger v. United States* shows that *Almendarez-Torres* can no longer be reconciled with *Apprendi*. Only this Court can finally resolve the inconsistency by overruling *Almendarez-Torres*.**

“In all criminal prosecutions,” the Sixth Amendment states, “the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation.” U.S. CONST., amend. VI. This Court has held for a quarter century that “[o]ther 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.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). The opening caveat in this rule -- “other than the fact of a prior conviction” -- reflects the holding of *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *Almendarez-Torres* permits an enhanced sentence under 8 U.S.C. § 1326(b), even if the defendant’s prior conviction is not placed in the indictment and treated as an element of the offense.

From the very outset, this Court has questioned whether *Apprendi* and *Almendarez-Torres* can be reconciled. *See Apprendi*, 530 U.S. at 489-90 (“Even though it is arguable that *Almendarez-Torres* was incorrectly decided, and that a logical application of our reasoning today should apply if the recidivist issue were contested, *Apprendi* does not contest the decision's validity...”); *Dretke v. Haley*, 541 U.S. 386 (2005)(“whether ... *Almendarez-Torres* should be overruled” is a “difficult constitutional question[]... to be avoided if possible.”). This Court’s decision in *Erlinger v. United States*, 602 U.S. 821 (2024), however, makes the further co-existence of these two decisions untenable. This Court should grant certiorari and

end the confusion surrounding the prior conviction exception to *Apprendi* by overruling *Almendarez-Torres*.

Several aspects of *Erlinger* make it impossible to apply it in a principled way while recognizing the vitality of *Almendarez-Torres*. *Erlinger* holds that the Sixth Amendment requires a jury to decide whether a defendant's prior convictions occurred on separate occasions if he or she receives an enhanced sentence under 18 U.S.C. §924(e), the Armed Career Criminal Act (ACCA). *See Erlinger*, 602 U.S. at 834. It is hard to draw a principled distinction, however, between the sequencing determination required by ACCA's separate occasions requirement and that set forth in § 1326(b).

ACCA requires a 15-year mandatory minimum, and permits a life sentence, when the defendant's three prior qualifying felonies were "committed on occasions different from one another." 18 U.S.C. § 924(e)(1). The "occasions" inquiry is a fact-specific one, encompassing consideration of the offenses' timing, character, relationship, and motive. *See Wooden v. United States*, 595 U.S. 360, 369 (2022). Section 1326(b)(2) requires a similar inquiry: a re-entry defendant may receive an enhanced statutory maximum only if his or her removal was after a conviction for a qualifying felony. 8 U.S.C. § 1326(b). If the Sixth Amendment requires a jury to resolve the sequencing issue in the ACCA context, it likely must do so in the §1326 context as well.

Certainly, ACCA presents the factfinder with a more complicated sequencing question than does § 1326(b)(1) or (2). Unlike § 1326(b), ACCA asks when the

defendant committed a prior offense, not when the conviction occurred; it asks about an offense’s purpose and character, not merely its timing. *See Wooden*, 595 U.S. at 369. But none of this implicates the constitutional line identified by *Erlinger*: whether the factfinder exceeds the “limited function’ of determining the fact of a prior conviction and the then-existing elements of that offense.” *Erlinger*, 602 U.S. at 839 (quoting *Descamps v. United States*, 570 U.S. 254, 260 (2013)); *id.* (finding constitutional error because “[t]o determine whether Mr. Erlinger’s prior convictions triggered ACCA’s enhanced penalties, the district court had to do more than identify his previous convictions and the legal elements required to sustain them.”). Under *Erlinger*, a judge may perform this limited function, but “[n]o more’ is allowed.” *Id.* (quoting *Mathis v. United States*, 579 U.S. 500, 511 (2016)). Complicated or simple, deciding whether a defendant’s prior conviction preceded or post-dated the date of his or removal from the country does not merely ask whether the defendant has a conviction, nor what its elements are. The line between judge and jury is not drawn between the complex and the simple, but at the fact and elements of a prior conviction.

And it is not merely *Erlinger*’s direct discussion of *Almendarez-Torres* that undermined the validity of *Almendarez-Torres*’s holding. After considering the controlling precedents and historical sources, *Erlinger* repeatedly stated that juries must decide every fact essential to the punishment range, without distinguishing between facts that pertained to prior offenses and those that did not. Canvassing several founding era original sources, the *Erlinger* court concluded that “requiring a

unanimous jury to find *every fact essential to an offender's punishment*" represented to the Founders an "anchor[]" essential to prevent a slide back toward regimes like the vice-admiralty courts they so despised." *Erlinger*, 602 U.S. at 832 (emphasis added)(quoting *Letter from T. Jefferson to T. Paine* (July 11, 1789), reprinted in *15 Papers of Thomas Jefferson* 266, 269 (J. Boyd ed. 1958)). "Every fact" means "every fact," not "every fact save one."

This Court called *Almendarez-Torres* into even further doubt when considering the sources and precedents offered by the Court Appointed Amicus. Considering the effect of *Graham v. W. Virginia*, 224 U.S. 616 (1912), cited by the Amicus, this Court observed that *Graham* "provides perhaps more reason to question *Almendarez-Torres*'s narrow exception than to expand it." *Erlinger*, 602 U.S. at 844. And considering state laws offered by the Amicus in support of a broad *Almendarez-Torres* exception, the Court observed that "it is not clear whether these four States always allowed judges to find even the fact of a defendant's prior conviction." *Id.* at 846.

This Court has now spent almost a quarter century trying to reconcile *Apprendi* and *Almendarez-Torres*. In doing so, it has repeatedly narrowed *Almendarez-Torres* until it now serves very little useful purpose outside the context of § 1326 itself. See *Erlinger*, 602 U.S. at 838, n.2. In the ACCA context, the exception no longer saves a court the trouble of assembling a jury to decide matters associated with prior convictions, nor the defendant the prejudice of having the jury exposed to prior convictions. See *Erlinger*, 602 U.S. at 852, 866 (Kavanaugh, J., dissenting).

On the other hand, the prior conviction exception has wreaked profound havoc in this Court’s statutory construction. To avoid constitutional issues associated with the scope of *Almendarez-Torres*, this Court has slathered elaborate procedural gloss on the text of ACCA. *See Mathis*, 579 U.S. at 511 (constitutional avoidance required court to ignore those parts of prior charging documents as to which defendant lacked right to unanimous jury determination); *Descamps*, 570 U.S. at 267 (constitutional avoidance required court to assume defendant convicted of burglary had been convicted of shoplifting because statute did not distinguish between them). Indeed, the entire categorical approach to criminal history enhancements exists to confine judicial fact-finding to the limits of *Almendarez-Torres*. *See Mathis*, 579 U.S. at 511 (“Sixth Amendment concerns” give rise to categorical approach); *Descamps*, 570 U.S. at 267 (same); *Shepard v. United States*, 544 U.S. 13, 26 (2005)(plurality op.) (“While the disputed fact here can be described as a fact about a prior conviction, it is too far removed from the conclusive significance of a prior judicial record, and too much like the findings subject to *Jones* and *Apprendi*, to say that *Almendarez-Torres* clearly authorizes a judge to resolve the dispute. The rule of reading statutes to avoid serious risks of unconstitutionality ... therefore counsels us to limit the scope of judicial factfinding on the disputed generic character of a prior plea, just as *Taylor* constrained judicial findings about the generic implication of a jury’s verdict.”) (internal citations omitted); *Taylor v. United States*, 495 U.S. 570, 601 (1990) (“Third, the practical difficulties and potential unfairness of a factual approach are daunting. In all cases where the Government alleges that the defendant's actual conduct would

fit the generic definition of burglary, the trial court would have to determine what that conduct was. ... If the sentencing court were to conclude, from its own review of the record, that the defendant actually committed a generic burglary, could the defendant challenge this conclusion as abridging his right to a jury trial?”).

That approach, borne of a need to reconcile *Almendarez-Torres* and *Apprendi*, has generated extensive criticism in the lower courts. See *United States v. Lewis*, 720 F. App'x 111, 118 (3d Cir. 2018) (unpublished)(Roth, J., concurring)(“Indeed, the categorical approach has of late received its share of deserved criticism.”). And it has caused the residual clauses of ACCA, see *Johnson v. United States*, 576 U.S. 591, 598 (2015), of 18 U.S.C. §16 (important to immigration law), see *Sessions v. Dimaya*, 584 U.S. 148 (2018), and of 18 U.S.C. §924(c), see *United States v. Davis*, 588 U.S. 445 (2019), all to be declared unconstitutionally vague.

*Erlinger* makes it all but impossible to imagine that *Apprendi* and *Almendarez-Torres* may be reconciled by narrowing the holding of *Almendarez-Torres*. The scope of the *Almendarez-Torres* exception has now shrunk to a size that will no longer contain even §1326 itself. The time has come to overrule it, which only this Court may fully do. See *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989).

## CONCLUSION

Petitioner asks this Court to grant certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted April 7, 2026.

/s/ Christy Martin

Christy Martin

*Assistant Federal Public Defender*

Northern District of Texas

525 S. Griffin Street, Suite 629

Dallas, TX 75202

(214) 767-2746

*Attorney for Petitioner*