

IN THE UNITED STATES COURT
OF APPEAL FOR THE TENTH CIRCUIT

United States of America v. Gamez-Reyes

Case No. 22-1245

Attachment A
Order and Judgment

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 18, 2024

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GERARDO GAMEZ-REYES, a/k/a
Gerardo Humberto Gamez-Reyes, a/k/a
Humberto Gamez-Reyes, a/k/a David
Torres, a/k/a David Torros-Reyes, a/k/a
Ruben Reyes, a/k/a Ruben Gamez, a/k/a
Manuel Munoz,

Defendant - Appellant.

No. 22-1245
(D.C. No. 1:21-CR-00123-CMA-1)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **McHUGH**, and **FEDERICO**, Circuit Judges.

Gerardo Gamez-Reyes appeals his conviction under 8 U.S.C. § 1326 for illegal reentry, arguing the statute violates the right to equal protection found in the Due Process Clause of the Fifth Amendment. Mr. Gamez-Reyes admits, however, that his

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

argument is foreclosed by *United States v. Amador-Bonilla*, 102 F.4th 1110 (10th Cir. 2024). For that reason, we affirm.

I. BACKGROUND

Mr. Gamez-Reyes was indicted on April 8, 2021, for violating 8 U.S.C. § 1326(a) and (b)(1) by reentering the United States without authorization after he was previously deported. Mr. Gamez-Reyes filed a motion to dismiss the indictment, in which he argued § 1326 is unconstitutional under the Due Process Clause because it was enacted with discriminatory intent and disparately impacts Latinx immigrants. The district court denied the motion to dismiss because it found Mr. Gamez-Reyes had not produced sufficient evidence that Congress was motivated by discriminatory animus when it enacted § 1326. Mr. Gamez-Reyes subsequently entered a conditional plea of guilty to a violation of § 1326(a) and (b)(1), preserving his right to appeal the denial of the motion to dismiss.

II. ANALYSIS

On appeal, Mr. Gamez-Reyes argues his conviction should be vacated on the ground that § 1326 is unconstitutional. He asserts that, under the test from *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), he produced sufficient evidence showing the statute was enacted with discriminatory intent. Specifically, Mr. Gamez-Reyes points to evidence of discriminatory animus underlying the Undesirable Aliens Act of 1929—which created a predecessor statute to § 1326—and Congress’s failure to acknowledge the animus that permeated the 1929 legislation when it enacted § 1326 in 1952. But Mr. Gamez-Reyes concedes that

his argument has already been rejected by this court in a published opinion. *See Amador-Bonilla*, 102 F.4th at 1113. He therefore raises this argument “for preservation purposes only.” Appellant’s Br. at 2.

In light of this concession and our binding precedent rejecting Mr. Gamez-Reyes’s theory, we affirm his conviction for a violation of § 1326(a) and (b)(1). *See United States v. Manzanares*, 956 F.3d 1220, 1225 (10th Cir. 2020) (“We are bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court.” (quotation marks omitted)).

III. CONCLUSION

For the foregoing reasons, we AFFIRM the district court’s judgment.

Entered for the Court

Carolyn B. McHugh
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

September 18, 2024

Kathleen Shen
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Districts of Colorado and Wyoming
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Denver, CO 80202

RE: 22-1245, United States v. Gamez-Reyes
Dist/Ag docket: 1:21-CR-00123-CMA-1

Dear Counsel:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40(a)(1), any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45 days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. *See* Fed. R. App. P. Rules 35 and 40, and 10th Cir. R.35 and 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of Court

cc: Kyle W. Brenton

CMW/sds