

NONPRECEDENTIAL DISPOSITION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