

20-437 UNITED STATES V. PALOMAR-SANTIAGO

DECISION BELOW: 813 Fed.Appx. 282

LOWER COURT CASE NUMBER: 19-10011

QUESTION PRESENTED:

Under 8 U.S.C. 1326(d), a defendant charged with unlawful reentry into the United States following removal may assert the invalidity of the original removal order as an affirmative defense only if he “demonstrates that” he “exhausted any administrative remedies that may have been available to seek relief against the order,” 8 U.S.C. 1326 (d)(1), the removal proceedings “deprived [him] of the opportunity for judicial review,” 8 U.S.C. 1326(d)(2), and “the entry of the order was fundamentally unfair,” 8 U.S.C. 1326 (d)(3).

The question presented is whether a defendant automatically satisfies all three of those prerequisites solely by showing that he was removed for a crime that would not be considered a removable offense under current circuit law, even if he cannot independently demonstrate administrative exhaustion or deprivation of the opportunity for judicial review.

ORDER OF FEBRUARY 22, 2021:

BRADLEY N. GARCIA, ESQ., OF WASHINGTON, D.C., IS APPOINTED TO SERVE AS COUNSEL FOR RESPONDENT IN THIS CASE.

CERT. GRANTED 1/8/2021