FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.
JUAN GONZALEZ-TORRES,

Defendant-Appellant.

No. 00-50543

D.C. No.
CR-00-00790-WBE

OPINION

Appeal from the United States District Court
for the Southern District of California
William B. Enright, District Judge, Presiding

Argued and Submitted
July 9, 2001--Pasadena, California

Filed December 11, 2001

Before: Pamela Ann Rymer and Johnnie B. Rawlinson,
Circuit Judges, and Donald C. Pogue,* Judge.

Opinion by Judge Rawlinson

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*Honorable Donald C. Pogue, Judge, Court of International Trade, sitting by designation.

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COUNSEL

Benjamin L. Coleman, Federal Defenders of San Diego, San Diego, California, and Shaun Khojayan, San Diego, California, for the defendant-appellant.

Gregory A. Vega, United States Attorney, San Diego, California, Bruce Castetter, Assistant United States Attorney, San

attempted to escape, but was unsuccessful. When the Immigration and Naturalization Service ("INS") attempted to identify the suspects through their fingerprints, the agents discovered that Torres, who used an alias, had also defaced

§ 1325 prohibits an alien from entering the United States without official authorization. 8 U.S.C. § 1326 prohibits the same conduct from an alien who has been previously removed. It is undisputed that Torres traveled from Mexico to the United States without approval.

Since 1908, federal courts have recognized that "entering" the United States requires more than mere physical presence within the country. United States v. Pacheco-Medina

he lost sight of the group "for a number of seconds" he knew the trail and was able to follow them "up to close to where they were actually apprehended." Between the agents, Torres' group was under continuous observation. Therefore, Torres was never free from official restraint.

B. The Smuggling Count: 8 U.S.C. § 1324(a)(2)(B)(iii)

[6] This section was substantially revised in 1986. Public Law 99-603, Title I, Part B, § 112 100 Stat. 3381. The legislative history indicates that Congress was particularly concerned with "shortcomings and ambiguities in existing law." H.R.Rep. No. 682(I), 99th Cong., 2d Sess. 65 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5669. Particularly, Congress was concerned with smuggling cases that equated "bring into" with "entering." H.R.Rep. No. 682(I), 99th Cong., 2d Sess. 65 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5670. Deliberately overruling case law requiring entry to sustain a smuggling conviction, Congress, replaced the words "brings into" with the words "brings to." H.R.Rep. No. 682(I), 99th Cong., 2d Sess. 65 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5670. Thus, we are not bound by our decision in Aguilar. United States v. Washington, 872 F.2d 874, 880 (9th Cir. 1989) ("We are not bound by decisions of

the district court's official restraint instruction. We must, however, determine whether the district court committed error by failing to give a specific unanimity instruction for the

RJR Holdings Inc., 252 F.3d at 1106 (finding that there is no further inquiry if congressional intent is clear from the plain and unambiguous meaning of the language). The text of the fvocally provides06 (fpef cties0aingto be text of the471j T* -0.471j TTc 0ssiryed for "each alienong707spectgto wh