

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 19-10138

Plaintiff-Appellant,

D.C. No. 4:18-cr-00076-JSW-1

v.

MARTIN RAMOS-URIAS,

MEMORANDUM*

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Submitted April 17, 2023**

Before: CLIFTON, R. NELSON, and BRESS, Circuit Judges.

The government appeals from the district court's order dismissing the indictment against Martin Ramos-Urias for illegal reentry in violation of 8 U.S.C. § 1326, and its order denying reconsideration. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court granted Ramos-Urias's motion to dismiss the indictment after concluding that deficiencies in the notice to appear deprived the immigration court of jurisdiction, rendering his 2006 removal order fundamentally unfair and relieving Ramos-Urias of the obligation to meet the other requirements of 8 U.S.C. § 1326(d). During the pendency of this appeal, the Supreme Court held in *United States v. Palomar-Santiago*, 141 S. Ct. 1615, 1622 (2021), that “each of the statutory requirements of § 1326(d) is mandatory.” In addition, we decided in *United States v. Bastide-Hernandez*, 39 F.4th 1187 (9th Cir. 2022) (en banc), *cert. denied*, 143 S. Ct. 755 (2023), that defects in a notice to appear do not deprive the immigration court of jurisdiction. In light of these decisions, we vacate the district court's order dismissing the indictment and remand for further proceedings.

Ramos-Urias's motion to file a supplemental brief is denied. The Clerk will strike the supplemental brief at Docket Entry No. 57.

VACATED and REMANDED.