

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

REFUGIO PALOMAR-SANTIAGO, AKA
Refugio Santiago Palomar,
Defendant-Appellee.

No. 19-10011

D.C. No.
3:17-cr-00116-
LRH-WGC-1

ORDER

On Remand from the United States Supreme Court

Filed July 9, 2021

Before: Richard A. Paez and Richard C. Clifton, Circuit
Judges, and M. Douglas Harpool,* District Judge.

Order

* The Honorable M. Douglas Harpool, United States District Judge
for the Western District of Missouri, sitting by designation.

SUMMARY**

Criminal Law

On remand from the Supreme Court, which reversed this court’s judgment and held that each of the statutory requirements of 8 U.S.C. § 1326(d) is mandatory, *United States v. Palomar-Santiago*, 593 U.S. ___, 141 S. Ct. 1615 (2021), the panel vacated the dismissal of the indictment and remanded to the district court for further proceedings consistent with the Supreme Court’s opinion.

ORDER

The Supreme Court recently reversed the judgment in this case, and remanded it to this court for further proceedings. *United States v. Palomar-Santiago*, 593 U.S. ___, 141 S.Ct. 1615 (2021).

We previously affirmed the district court’s dismissal of the indictment alleging a violation of 8 U.S.C. § 1326, relying on this court’s precedent excusing a defendant from proving all of the elements of § 1326(d) when “the crime underlying the original removal was improperly characterized as an aggravated felony.” *United States v. Palomar-Santiago*, 813 F. App’x 282, 284 (9th Cir. 2020) (citing *United States v. Ochoa*, 861 F.3d 1010, 1015 (9th Cir. 2017)). The Supreme Court held that “each of the statutory requirements of § 1326(d) is mandatory.” 141 S.Ct. at 1622. We therefore **VACATE** the dismissal of the indictment and

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

REMAND to the district court for further proceedings consistent with the Supreme Court's opinion.

The copy of this order shall act as and for the mandate of this court.

IT IS SO ORDERED.