

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 19-4663**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERLIN JOSUE TORRES ZUNIGA, a/k/a Erlin Jose Torres-Zuniga, a/k/a  
Mazimilliano Dejesus Pinzon, a/k/a Max Dejesus Pinzon, a/k/a Joche Torres-Zuniga,  
a/k/a Kevin G. Zuniga,

Defendant - Appellant.

---

Appeal from the United States District Court for the Eastern District of Virginia, at  
Richmond. Robert E. Payne, Senior District Judge. (3:18-cr-00155-REP-1)

---

Submitted: May 27, 2020

Decided: June 1, 2020

---

Before MOTZ, THACKER, and QUATTLEBAUM, Circuit Judges.

---

Affirmed by unpublished per curiam opinion.

---

Jeremy C. Kamens, Federal Public Defender, Alexandria, Virginia, Joseph S. Camden,  
Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER,  
Richmond, Virginia, for Appellant. G. Zachary Terwilliger, United States Attorney,  
Alexandria, Virginia, S. David Schiller, Assistant United States Attorney, OFFICE OF  
THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Erlin Josue Torres Zuniga pled guilty to illegal reentry, in violation of 8 U.S.C. § 1326(a) (2018). He was sentenced to 12 months' imprisonment. In his written plea agreement, Zuniga reserved the right to challenge on appeal the district court's order denying his motion to dismiss. Finding no error, we affirm.

An alien who has been removed from the United States pursuant to an order of removal, but reenters the country illegally may be charged with illegal reentry in violation of 8 U.S.C. § 1326(a). "In a criminal proceeding for illegal reentry, the existence of a removal order usually is enough to meet the government's burden of establishing the defendant's prior removal or deportation." *United States v. Cortez*, 930 F.3d 350, 356 (4th Cir. 2019). Zuniga argued before the district court that the underlying order of removal was invalid because the immigration judge ("IJ") lacked jurisdiction to conduct his removal proceedings. On a motion to dismiss an indictment under 8 U.S.C. § 1326(d) (2018), we review a district court's factual findings for clear error and the court's legal conclusions de novo. See *United States v. Hosford*, 843 F.3d 161, 163 (4th Cir. 2016).

Pursuant to 8 U.S.C. § 1326(d), a defendant may not challenge the validity of the removal order unless the defendant demonstrates that:

- (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;
- (2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
- (3) the entry of the order was fundamentally unfair.

The order is fundamentally unfair if the defendant shows that “(1) his due process rights were violated by defects in his underlying deportation proceeding, and (2) he suffered prejudice as a result of the defects.” *United States v. El Shami*, 434 F.3d 659, 664 (4th Cir. 2005).

Here, Zuniga failed show that he exhausted his administrative remedies or that he was improperly deprived of judicial review. Furthermore, he failed to show that entry of the order was fundamentally unfair. His assertion that he was excused from satisfying § 1326(d) because the IJ lacked jurisdiction is without merit. *See Cortez*, 930 F.3d at 358 (rejecting similar jurisdictional argument); *see also United States v. Lira-Ramirez*, 951 F.3d 1258, 1262-63 (10th Cir. 2020) (holding that transitional rules under the Illegal Immigration Reform and Immigrant Responsibility Act did not clearly show that 8 U.S.C. § 1229 (2018) is jurisdictional).

Accordingly, we affirm the district court’s judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*