

## Indictment need not specifically allege a particular overt act

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United States v. Resendiz-Ponce, Opinion No. 05-998. Argued October 10, 2006

Decided January 9, 2007

The United States Supreme Court was asked to decide whether a valid criminal indictment alleging attempted illegal re-entry needs to specifically allege a particular overt act or any other component part of the offense. {mosloadposition advert1} In an 8-1 opinion written by Justice Stevens, with a dissent by Justice Scalia, held that such an indictment need not specifically allege a particular overt act, or any other component part of the subject offense. The United States Court of Appeals for the Ninth Circuit was overruled by the United States Supreme Court when it held that an indictment alleging attempted illegal reentry must specifically allege a particular overt act or any other component part of the offense. The United States District Court for the District of Arizona convicted defendant Juan Resendiz-Ponce, a Mexican citizen, of attempted reentry into the U.S. after having been previously deported -violating 8 U.S.C. Sec 1326(a), after Resendiz Ponce attempted to enter the U.S. using falsified identification. The defendant appealed his conviction to the United

States Court of Appeals for the Ninth Circuit, claiming that his indictment was defective in that it failed to allege the overt act of attempted entry into the U.S. The Ninth Circuit Court of Appeals found for Resendiz-Ponce and reversed and remanded his conviction to the trial court. The United States appealed to the United States Supreme Court which held that the indictment lacking mention of the overt act did not violate any criminal procedure rules and did not deprive Resendiz-Ponce of any rights the constitutional grand jury guarantee is intended to protect. The Court essentially reasoned that the contents of the indictment implied that Resendiz-Ponce committed the requisite overt act, satisfying the requirement that an indictment set forth the elements of the allegedly committed crime. Because the Court found that Resendiz-Ponce's indictment was not defective, it ended its analysis there, and it did not reach the issue with regard to the harmless error analysis. The Court reversed and remanded the judgment of the lower appellate court. Disclaimer Language: Legalnut.com offers summaries to its visitors for informational purposes. These summaries are not intended to be a comprehensive resource of case law, nor a substitute for comprehensive legal research. Legal decisions should not be based on the legal summaries provided. In-depth legal research and/or consultation with a competent attorney are required, and these summaries are not to be deemed a substitute to or for either.