

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-50764
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 13, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ABDIAS RODRIGUEZ-RAMIREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:19-CR-366-1

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

Abdias Rodriguez-Ramirez appeals his within-guidelines sentence of 16 months of imprisonment and three years of supervised release imposed following his guilty-plea conviction for illegal reentry. He asserts that the enhancement of his sentence pursuant to 8 U.S.C. § 1326(b)(2), which increased the maximum term of imprisonment to 20 years and the maximum term of supervised release to three years, is unconstitutional because of the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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treatment of the provision as a sentencing factor rather than as an element of the offense that must be alleged in the indictment and proved to a jury beyond a reasonable doubt.

As Rodriguez-Ramirez concedes, this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 239-47 (1998). See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Rojas-Luna*, 522 F.3d 502, 505-06 (5th Cir. 2008). Thus, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.