

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 1, 2020

Lyle W. Cayce
Clerk

No. 20-50049
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JUAN LOPEZ-CANALES, *also known as* JUAN MANUEL LOPEZ-
CANALES,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:19-CR-511-1

Before HAYNES, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

Juan Lopez-Canales appeals his sentence of 24 months of imprisonment and three years of supervised release, which the district court imposed following his guilty plea conviction for illegal reentry, in violation of

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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8 U.S.C. § 1326. He argues that the enhancement of his sentence based on his prior convictions pursuant to § 1326(b), which increased the statutory maximum terms of imprisonment and supervised release, is unconstitutional because his prior convictions are treated as sentencing factors rather than elements of the offense that must be alleged in the indictment and found by a jury beyond a reasonable doubt. He concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the issue for further review. The Government moves for summary affirmance, asserting that Lopez-Canales's argument is foreclosed.

The parties are correct that Lopez-Canales's assertion is foreclosed by *Almendarez-Torres*. 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). Accordingly, summary affirmance is GRANTED, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), 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.