

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 2, 2021

Lyle W. Cayce
Clerk

No. 20-50587
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ARMANDO LEYVA, *also known as* ARMANDO LEYVA-LUEVANOS, *also known as* ARMANDO LEYVA-MUNOZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:20-CR-602-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Appealing the judgment in a criminal case, Armando Leyva argues that the application of 8 U.S.C. § 1326(b)(1) in his case, which increased his maximum term of imprisonment to 10 years and his maximum term 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* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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supervised release to three years, is unconstitutional because it was based on the fact of a prior felony conviction, which was neither alleged in his indictment nor found by a jury beyond a reasonable doubt. As he concedes, the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226 (1998).

Specifically, in *Almendarez-Torres*, the Supreme Court held that, for purposes of a statutory sentencing enhancement, a prior conviction is not a fact that must be alleged in an indictment or proved to a jury beyond a reasonable doubt. 523 U.S. at 226-27, 239-47. This court has held that subsequent Supreme Court decisions did not overrule *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007).

The Government's motion for summary affirmance is GRANTED, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.