

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

United States Court of Appeals
Fifth Circuit

FILED

January 21, 2020

Lyle W. Cayce
Clerk

No. 19-50521
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PABLO URIAS BEJARANO,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:18-CR-699-1

Before STEWART, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Pablo Urias Bejarano contends that a prior aggravated felony conviction is an element of the offense under 8 U.S.C. § 1326(b)(2) that must be alleged in the indictment and admitted by the defendant or 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 (1998).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 19-50521

In *Almendarez-Torres*, 523 U.S. at 239-47, 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 found by a jury beyond a reasonable doubt. 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) (considering the effect of *Alleyne v. United States*, 570 U.S. 99 (2013)); *United States v. Rojas-Luna*, 522 F.3d 502, 505-06 (5th Cir. 2008) (considering the effect of *Apprendi v. New Jersey*, 530 U.S. 466 (2000)).

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 as moot.