

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

United States Court of Appeals  
Fifth Circuit

**FILED**

March 11, 2020

Lyle W. Cayce  
Clerk

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No. 19-50773  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MILTON BARRIOS-ALVARADO,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:18-CR-2726-1

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Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

Milton Barrios-Alvarado appeals his within-guidelines sentence of 57 months of imprisonment and three years of supervised release imposed following his guilty plea conviction for illegal reentry after deportation. He argues that the enhancement of his sentence based on his prior conviction pursuant to § 1326(b)(1), which increased the statutory maximum term of imprisonment to 10 years and the statutory maximum term of supervised

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 19-50773

release to three years, is unconstitutional because his prior conviction is treated as a sentencing factor rather than an element 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 possible Supreme Court review because, he argues, subsequent decisions indicate that the Supreme Court may reconsider its holding in *Almendarez-Torres*. The Government moves for summary affirmance, urging that Barrios-Alvarado's argument is foreclosed.

The parties are correct that Barrios-Alvarado's argument 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, the Government's motion for 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.