

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 23, 2020

Lyle W. Cayce  
Clerk

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No. 20-50201  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JUAN JOSE MONTELONGO-MONTERO, *also known as* JUAN JOSE M  
M, *also known as* JUAN JOSE MONTELONGO, *also known as* JUAN JOSE  
MONTERO, *also known as* JUAN JOSE MONTERO-MONTELONGO, *also*  
*known as* JUANJOSE MONTELONGO MONTERO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:19-CR-811-1

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Before KING, SMITH, and WILSON, *Circuit Judges.*

PER CURIAM:\*

Juan Jose Montelongo-Montero appeals his sentence of 30 months of imprisonment and three years of supervised release, which the district court

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-50201

imposed following his guilty plea conviction for illegal reentry. He asserts that the enhancement of his sentence based on his prior conviction under 8 U.S.C. § 1326(b)(2), which increased the statutory maximum term of imprisonment, 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 further review. The Government moves for summary affirmance, asserting that Montelongo-Montero's argument is foreclosed.

The parties are correct that *Almendarez-Torres* forecloses Montelongo-Montero's assertion. 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 district court's judgment is AFFIRMED, and the Government's alternative motion for an extension of time to file its brief is DENIED AS MOOT.