

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

March 8, 2021

Lyle W. Cayce  
Clerk

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No. 20-50739  
CONSOLIDATED WITH  
No. 20-50740  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

VICENTE ALVAREZ-MORENO,

*Defendant—Appellant.*

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Appeals from the United States District Court  
for the Western District of Texas  
USDC No. 4:19-CR-682-1  
USDC No. 4:20-CR-89-1

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

PER CURIAM:\*

Vicente Alvarez-Moreno appeals his conviction for illegal reentry into the United States. He argues that the enhanced sentencing range in 8 U.S.C.

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 20-50739  
c/w No. 20-50740

§ 1326(b) is unconstitutional because a prior conviction is an element of the offense that must be alleged in the indictment or 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 wishes to preserve it for further review.<sup>1</sup> The Government has filed an unopposed motion for summary affirmance, agreeing that the issue is foreclosed by *Almendarez-Torres*. Alternately, the Government requests an extension of time to file its brief.

As he concedes, Alvarez-Moreno's sole appellate argument is foreclosed by *Almendarez-Torres*. See *Apprendi v. New Jersey*, 530 U.S. 466, 476, 490 (2000); *Almendarez-Torres*, 523 U.S. at 226-27; *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Garza-Lopez*, 410 F.3d 268, 276 (5th Cir. 2005). Because the Government's position "is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case," *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's motion for summary affirmance is GRANTED, 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.

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<sup>1</sup> Alvarez-Moreno also filed an appeal from the revocation of his supervised release. However, he has abandoned any challenge to his revocation by failing to brief it on appeal. See *United States v. Still*, 102 F.3d 118, 122 n.7 (5th Cir. 1996)