

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

August 23, 2021

Lyle W. Cayce  
Clerk

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No. 21-10030  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ROBERTO AGUILAR-HERNANDEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:20-CR-174-1

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Before HIGGINBOTHAM, HIGGINSON, and DUNCAN, *Circuit Judges.*

PER CURIAM:\*

Roberto Aguilar-Hernandez appeals the within-guidelines sentence of 71 months of imprisonment and three years of supervised release imposed following his guilty plea conviction for illegal reentry after deportation. For the first time on appeal, Aguilar-Hernandez contends that his guilty plea was

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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not knowing and voluntary, because he was not admonished that to trigger a sentencing enhancement under 8 U.S.C. § 1326(b)(1), the fact of a prior conviction must be proved to a jury beyond a reasonable doubt, and that his terms of imprisonment and supervised release are unconstitutional because they exceed the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt.

Aguilar-Hernandez correctly concedes, however, that his arguments are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). 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). Thus, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, summary affirmance is GRANTED, 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.