

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 3, 2021

Lyle W. Cayce
Clerk

No. 21-10520
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MIGUEL LERMA-REYES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-119-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Miguel Lerma-Reyes appeals following his guilty-plea conviction of illegal reentry into the United States, arguing that the enhancement of his sentence pursuant to 8 U.S.C. § 1326(b)(2) is unconstitutional because the fact of a prior conviction must be charged and proved to a jury beyond a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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reasonable doubt and that his plea was involuntary because he was not admonished that § 1326(b)(2) contained an essential offense element. He acknowledges that these arguments are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he wishes to preserve them for further review. The Government has moved for summary affirmance or, in the alternative, for an extension of time to file a brief.

Almendarez-Torres held that a prior conviction is not a fact that must be alleged in an indictment or found beyond a reasonable doubt by a jury for purposes of a statutory sentencing enhancement. 523 U.S. at 239-47. This court has concluded that subsequent Supreme Court decisions did not overrule *Almendarez-Torres*. See, e.g., *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). Accordingly, Lerma-Reyes's concession of foreclosure is correct, and summary affirmance is appropriate. See *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 district court's judgment is AFFIRMED.