

United States Court of Appeals  
for the Fifth Circuit

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No. 21-50432  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

October 29, 2021

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

RIGOBERTO ORTIZ-MARTINEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:20-CR-1550-1

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Before KING, COSTA, and HO, *Circuit Judges.*

PER CURIAM:\*

Rigoberto Ortiz-Martinez appeals the sentence of 21 months of imprisonment with three years of supervised release imposed on his guilty-plea conviction for illegal reentry. He contends that the enhancement of his sentence based on a prior conviction pursuant to 8 U.S.C. § 1326(b)(2) is

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 21-50432

unconstitutional because the fact of a prior conviction must be charged and proved to a jury beyond a reasonable doubt. While Ortiz-Martinez acknowledges this argument to be foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), he nevertheless seeks to preserve the issue for further review. The Government has moved for summary affirmance on the ground that Ortiz-Martinez's argument is foreclosed.

The Supreme Court held in *Almendarez-Torres* that for purposes of a statutory sentencing enhancement, a prior conviction is not a fact that must be alleged in an indictment or found beyond a reasonable doubt by a jury. 523 U.S. at 239-47. We have held that subsequent Supreme Court decisions such as *Alleyne v. United States*, 570 U.S. 99 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), 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). Ortiz-Martinez is thus correct that his argument is foreclosed. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, 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 AS MOOT, and the district court's judgment is AFFIRMED.