

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-50727
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 19, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN CARLOS MARTINEZ-BARRIENTOS,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:17-CR-93-1

Before DAVIS, COSTA and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Juan Carlos Martinez-Barrientos raises an as-applied constitutional challenge to 8 U.S.C. § 1326(b) that is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). The Supreme Court held in *Almendarez-Torres* that the fact of a prior conviction that increases a defendant's statutory sentencing exposure is a sentencing factor, rather than an element of the offense that requires a finding

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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by a jury beyond a reasonable doubt. 523 U.S. at 235, 239. Accordingly, the Government's motion for 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 an appellee's brief is DENIED as moot.