

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

United States Court of Appeals
Fifth Circuit

FILED

May 5, 2020

Lyle W. Cayce
Clerk

No. 19-10602
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS SANCHEZ-CHACON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-3-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Jesus Sanchez-Chacon appeals his sentence for illegal reentry following deportation. *See* 8 U.S.C. § 1326(a), (b)(1). He was sentenced to 70 months of imprisonment and three years of supervised release. He contends that the enhancement of his sentence pursuant to § 1326(b)(1) based on a prior felony conviction, which increased the statutory maximum terms of imprisonment and supervision, is unconstitutional because his prior conviction is treated as

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 19-10602

a sentencing factor rather than an element of the offense that must be alleged in the indictment and found by a jury beyond a reasonable doubt or admitted by him following a proper admonishment. Sanchez-Chacon concedes that this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the issue for possible Supreme Court review because he asserts there is reason to believe the Court may revisit *Almendarez-Torres*. The Government moves for summary affirmance based on *Almendarez-Torres* or, alternatively, for an extension of time to file a merits brief.

The parties are correct that Sanchez-Chacon's argument is clearly foreclosed by *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007). Accordingly, the Government's motion for summary affirmance is GRANTED. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's alternative motion for an extension of time is DENIED. The judgment is AFFIRMED.