

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 12, 2021

Lyle W. Cayce
Clerk

No. 21-50425
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

OSCAR MAURICIO BERRIOS-RIOS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:20-CR-536-1

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

PER CURIAM:*

Oscar Mauricio Berrios-Rios appeals the sentence imposed following his guilty-plea conviction of illegal reentry into the United States, arguing only that the enhancement of his sentence pursuant to 8 U.S.C. § 1326(b)(2)

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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is unconstitutional because the fact of a prior conviction must be charged and proved to a jury beyond a reasonable doubt. He acknowledges that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he wishes to preserve the issue 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, Berrios-Rios's concession of foreclosure is correct, and summary judgment 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.