

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 14, 2021

Lyle W. Cayce
Clerk

No. 21-50535
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARCELINO TORRES QUIMARE,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:20-CR-583-1

Before JOLLY, WILLET, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Marcelino Torres Quimare appeals the sentence imposed following his guilty plea conviction for illegal reentry after removal in violation of 8 U.S.C. § 1326. He challenges his sentence by contending that § 1326(b) is unconstitutional because it provides for a sentence greater than the two-year

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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maximum of § 1326(a) based on facts concerning a prior conviction that are neither found by a jury nor alleged in an indictment. He acknowledges that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he raises the issue for the express purpose of preserving it for further review. The Government has moved for summary affirmance or, in the alternative, for an extension of time to file a brief.

In *Almendarez-Torres*, 523 U.S. at 226-28, 235, the Supreme Court held that, for purposes of a statutory sentencing enhancement, a prior conviction is not a fact that must be alleged in an indictment or found by a jury beyond a reasonable doubt. We have 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, Torres Quimare'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.