

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Rafael Ayala-Solorio

No. 20-10170, United States Court of Appeals for the Fifth Circuit (October 12, 2020)

SUMMARY

The Fifth Circuit affirmed a 120-month sentence for illegal reentry under 8 U.S.C. § 1326, holding that the defendant's challenge to the § 1326(b) recidivism enhancement as an element requiring indictment and jury proof is foreclosed by **Almendarez-Torres v. United States**, 523 U.S. 224 (1998). The court granted summary affirmance, rejecting the argument that the guilty plea was invalid for lack of notice of the enhancement.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Clement; Higginson; Engelhardt
JURISDICTION	Federal
DECIDED	October 12, 2020
DOCKET	20-10170
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from criminal sentence after guilty plea
STANDARD OF REVIEW	Not explicitly stated, but the issue is foreclosed by precedent
PRECEDENTIAL VALUE	unpublished
PARTIES	Rafael Ayala-Solorio v. United States of America

TOPICS

- criminal procedure
- sentencing
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- Criminal Law

QUESTIONS PRESENTED

1. Whether the recidivism enhancement set forth in § 1326(b) is an element of the offense that must be alleged in the indictment and proven beyond a reasonable doubt to a jury, such that the guilty plea is

invalid and the sentence illegal.

HOLDINGS

1. The recidivism enhancement is not an element of the offense; it is a sentencing factor that need not be alleged in the indictment. This is foreclosed by *Almendarez-Torres*.

KEY QUOTATIONS

“The parties are correct that Ayala-Solorio’s claim is foreclosed by Almendarez-Torres.” (2)

“Accordingly, 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 to file a brief is DENIED, and the judgment of the district court is AFFIRMED.” (2)

FACTUAL BACKGROUND

Ayala-Solorio pleaded guilty to illegal reentry in violation of 8 U.S.C. § 1326. The district court applied a recidivism enhancement under § 1326(b) and sentenced him to 120 months of imprisonment and three years of supervised release.

PROCEDURAL HISTORY

The defendant was convicted in the Northern District of Texas for illegal reentry in violation of 8 U.S.C. § 1326. He was sentenced to 120 months imprisonment and three years supervised release. He appealed, arguing that the recidivism enhancement under § 1326(b) is an element of the offense.

DISPOSITION

affirmed

CASES CITED

- *Almendarez-Torres v. United States*, 523 U.S. 224 (1998)
- *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014)
- *United States v. Rojas-Luna*, 522 F.3d 502, 505-06 (5th Cir. 2008)
- *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969)

OPINION

PER CURIAM.

Case: 20-10170 Document: 00515597649 Page: 1 Date Filed: 10/12/2020 United States Court of Appeals for the Fifth Circuit United States Court of Appeals Fifth Circuit FILED October 12, 2020 No. 20-10170 Lyle W. Cayce Summary Calendar Clerk United States of America, Plaintiff—Appellee, versus Rafael Ayala-Solorio, Defendant—Appellant. Appeal from the United States

District Court for the Northern District of Texas USDC No. 4:19-CR-265-1 Before Clement, Higginson, and Engelhardt, Circuit Judges.

Per Curiam:* Rafael Ayala-Solorio appeals his sentence of 120 months of imprisonment and three years of supervised release, which the district court imposed following his guilty plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326. He argues that the recidivism enhancement set forth in * 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.

Case: 20-10170 Document: 00515597649 Page: 2 Date Filed: 10/12/2020 No. 20-10170 § 1326(b) is an element of the offense that must be alleged in the indictment and proven beyond a reasonable doubt to a jury. He therefore argues that his guilty plea is invalid because he was not advised of an element of the offense and that his sentence is illegal because the application of § 1326(b) increased the statutory maximum terms of imprisonment and supervised release.

He concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the issue for further review. The Government moves for summary affirmance, asserting that Ayala- Solorio's argument is foreclosed. Alternatively, the Government seeks an extension of time to file a brief.

The parties are correct that Ayala-Solorio's claim is foreclosed by *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Rojas-Luna*, 522 F.3d 502, 505-06 (5th Cir. 2008).

Accordingly, 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 to file a brief is DENIED, and the judgment of the district court is AFFIRMED. 2