

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JESUS VILLARREAL-RAMIREZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the
Northern District of Texas

APPENDIX A

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

United States Court of Appeals
Fifth Circuit

FILED

July 6, 2020

Lyle W. Cayce
Clerk

No. 19-11286
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS VILLARREAL-RAMIREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-170-1

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Jesus Villarreal-Ramirez appeals his within-guidelines sentence of 57 months in prison and two years of supervised release, imposed following his guilty plea conviction for illegal reentry after removal. He argues that the enhancement of his sentence based on a prior conviction pursuant to 8 U.S.C. § 1326(b)(2), which increased the statutory maximum term of imprisonment to 20 years and the statutory maximum term of supervised release to three years,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

is unconstitutional because his prior conviction is treated as 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. 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 possible Supreme Court review because, he argues, subsequent decisions indicate that the Supreme Court may reconsider its holding in *Almendarez-Torres*. The Government moves for summary affirmance, urging that Villarreal-Ramirez's argument is foreclosed.

The parties are correct that Villarreal-Ramirez's argument 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, 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 to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JESUS VILLARREAL-RAMIREZ

Case Number: 4:19-CR-00170-O(01)

U.S. Marshal's No.: 79383-179

Michael Levi Thomas, Assistant U.S. Attorney

John Stickney, Attorney for the Defendant

On July 10, 2019 the defendant, JESUS VILLARREAL-RAMIREZ, entered a plea of guilty as to Count One of the Indictment filed on May 22, 2019. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

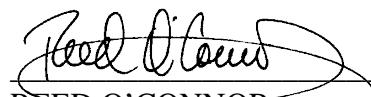
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326(a) and (b)(2)	Illegal Reentry After Deportation	2/17/2019	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on May 22, 2019.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed November 14, 2019.


REED O'CONNOR
U.S. DISTRICT JUDGE

Signed November 15, 2019.

Judgment in a Criminal Case
Defendant: JESUS VILLARREAL-RAMIREZ
Case Number: 4:19-CR-00170-O(1)

Page 2 of 4

IMPRISONMENT

The defendant, JESUS VILLARREAL-RAMIREZ, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **FIFTY-SEVEN (57) months** as to Count One of the Indictment filed on May 22, 2019. This sentence shall run concurrently with the sentence imposed in Case No. 1583747, Possession of a Controlled Substance, in the 371st Judicial District Court, Tarrant County.

The Court further recommends that the defendant be housed at an FCI facility close to Fort Worth, Texas, if possible.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **TWO (2) years** as to Count One of the Indictment filed on May 22, 2019.

As a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 USC § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions contained in the Judgment and shall comply with the mandatory and special conditions stated herein:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

Judgment in a Criminal Case

Page 3 of 4

Defendant: JESUS VILLARREAL-RAMIREZ

Case Number: 4:19-CR-00170-O(1)

- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry; and,

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of placement on probation or release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case

Page 4 of 4

Defendant: JESUS VILLARREAL-RAMIREZ

Case Number: 4:19-CR-00170-O(1)

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY
Deputy Marshal