

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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BERNARDINO BERRUN-TORRES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

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/s/ Kevin Joel Page

JASON HAWKINS  
Federal Public Defender  
Northern District of Texas  
TX State Bar No. 00759763  
525 Griffin Street, Suite 629  
Dallas, TX 75202  
(214) 767-2746  
(214) 767-2886 Fax

KEVIN J. PAGE \*\*  
Assistant Federal Public Defender  
Northern District of Texas  
TX State Bar No. 24042691  
525 Griffin Street, Suite 629  
Dallas, TX 75202  
(214) 767-2746  
(214) 767-2886

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Appendix A Opinion of Fifth Circuit, CA No. 22-10645, dated December 8, 2022,  
*United States v. Berrun-Torres*, 2022 WL 17496029 (5<sup>th</sup> Cir. Dec. 8, 2022)(unpublished).

Appendix B Judgment and Sentence of the United States District Court  
for the Northern District of Texas, entered June 30, 2022.  
*United States v. Berrun-Torres*, Dist. Court 4:22-CR-16-Y-1.

## APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

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No. 22-10645  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

December 8, 2022

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

BERNARDINO BERRUN-TORRES,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:22-CR-16-1

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Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:\*

Bernardino Berrun-Torres appeals his conviction and sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326(a) and (b)(2). Berrun-Torres contends, as he did in the district court, that it violates the Constitution to treat a prior conviction that increases the statutory maximum under § 1326(b) as a sentencing factor, rather than as an element of the

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\* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

No. 22-10645

offense. Berrun-Torres concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve it for further review. Agreeing that the issue is foreclosed, the government moves without opposition for summary affirmance, or, alternatively, for an extension of time to file its brief.

The parties are correct that Berrun-Torres's assertion is foreclosed by *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019). Accordingly, the 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 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.

BERNARDINO BERRUN-TORRES

Case Number: 4:22-CR-016-Y(1)

M. Levi Thomas, assistant U.S. attorney

Andrea G. Aldana, attorney for the defendant

On February 16, 2022, the defendant, Bernardino Berrun-Torres, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<b><u>TITLE &amp; SECTION</u></b>	<b><u>NATURE OF OFFENSE</u></b>	<b><u>OFFENSE CONCLUDED</u></b>	<b><u>COUNT</u></b>
8 U.S.C. § 1326(a) and (b)(2)	Illegal Reentry After Deportation	December 15, 2021	1

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

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

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 June 28, 2022.

  
\_\_\_\_\_  
TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE

Signed June 30, 2022

## **IMPRISONMENT**

The defendant, Bernardino Berrun-Torres, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 108 months on count one of the one-count indictment.

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 3 years on count one of the one-count indictment.

Under 18 U.S.C. § 3583(d), as a condition of supervised release upon the completion of the sentence of imprisonment, the defendant shall be surrendered by the Federal Bureau of Prisons to a duly authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* As a condition of supervised release, if ordered deported, 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 recommended by the U.S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapons;
- cooperate in the collection of DNA as directed by the probation officer, as authorized by the Justice for All Act of 2004;
- report in person to the probation office in the district to which the defendant is released from the 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;
- not illegally re-enter the United States, if deported, removed, or allowed voluntary departure;
- refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court; and
- participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25.00 per month.

## **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.

**RETURN**

I have executed this judgment as follows:

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

\_\_\_\_\_  
United States marshal

BY \_\_\_\_\_  
deputy marshal