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States Court of Appeals  
for the Third Circuit

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5-28-2008

## USA v. Austin

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 06-2355

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UNITED STATES OF AMERICA

v.

RANDALL AUSTIN,  
Appellant

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
(D.C. Crim. No. 03-cr-00682)  
District Judge: The Honorable Petrese B. Tucker

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Submitted Under Third Circuit LAR 34.1(a)  
May 6, 2008

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Before: SCIRICA, Chief Judge, BARRY and HARDIMAN, Circuit Judges

(Opinion Filed: May 28, 2008)

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OPINION

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BARRY, Circuit Judge

Appellant Randall Austin appeals the District Court's imposition of a 240-month term of imprisonment following his conviction for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). The District Court imposed the sentence after

finding that the government had proven by a preponderance of the evidence that the criteria for application of the Armed Career Criminal (“ACC”) enhancement of 18 U.S.C. § 924(e) to Austin had been satisfied. Had the District Court not applied the ACC enhancement, Austin would have faced a statutory maximum sentence of 120 months in prison.

Austin raises a single issue on appeal, namely whether the government’s failure to charge all of the ACC predicate offenses in the indictment and to prove them to a jury beyond a reasonable doubt violated his Fifth and Sixth Amendment rights. This argument is clearly foreclosed by the Supreme Court’s decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Vargas*, 477 F.3d 94, 105 (3d Cir. 2007) (declaring that *Almendarez-Torres* “continues to bind our decisions”); *United States v. Coleman*, 451 F.3d 154, 161 (3d Cir. 2006) (stating that “*Almendarez-Torres* remains good law”); *United States v. Ordaz*, 398 F.3d 236, 241 (3d Cir. 2005) (noting that “[t]he holding in *Almendarez-Torres* remains binding law”). We will affirm.

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