

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

No. 19-50333
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 3, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

GILDARDO CRUZ-RAMIREZ,

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:18-CR-2218-1

Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:*

Gildardo Cruz-Ramirez appeals the 30-month above-guidelines sentence and three-year term of supervised release following his guilty plea conviction for being found unlawfully in the United States after previous deportation. He argues that his sentence is unconstitutional because it exceeds the maximum sentence of 8 U.S.C. § 1326(a) charged in the indictment. However, he correctly

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 19-50333

concedes that the issue whether his eligibility for a sentencing enhancement under § 1326(b) must be alleged in the indictment and proved to a jury is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *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). Thus, summary affirmance is appropriate. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, 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 judgment of the district court is AFFIRMED.