IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 19-50504 Summary Calendar United States Court of Appeals Fifth Circuit

FILED

December 12, 2019

Lyle W. Cayce Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RAUL MENDOZA-CEPEDA,

Defendant-Appellant

Appeal from the United States District Court for the Western District of Texas USDC No. 2:18-CR-1509-1

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:*

Raul Mendoza-Cepeda appeals the 27-month guidelines sentence and three-year term of supervised release imposed following his guilty plea conviction for being found unlawfully in the United States after previous removal. He argues that his sentence is unconstitutional because it exceeds the maximum sentence of 18 U.S.C. § 1326(a) charged in the indictment. However, he correctly concedes that the issue whether his eligibility for a

^{*} 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 19-50504

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.