

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

United States Court of Appeals  
Fifth Circuit

**FILED**

June 26, 2020

Lyle W. Cayce  
Clerk

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No. 19-50915  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HILARIO RESENDIZ-TREJO,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:19-CR-1335-1

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Before STEWART, HIGGINSON, and COSTA, Circuit Judges.

PER CURIAM:\*

Hilario Resendiz-Trejo appeals his 21-month sentence imposed following his guilty plea for illegal reentry into the United States, in violation of 8 U.S.C. § 1326. Raising one issue on appeal, Resendiz-Trejo argues that his sentence, imposed under § 1326(b)(1), violates his due process rights by exceeding the two-year statutory maximum set forth in § 1326(a) because the indictment did not allege a prior conviction necessary for the § 1326(b)(1) enhancement. He

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998), but seeks to preserve the issue for further review. The Government filed an unopposed motion for summary affirmance agreeing that the issue is foreclosed and, in the alternative, a motion for an extension of time to file a brief.

As the Government argues, and Resendiz-Trejo concedes, the sole issue raised on appeal is foreclosed by *Almendarez-Torres*. 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). Because the issue is foreclosed, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.