

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

United States Court of Appeals
Fifth Circuit

FILED

July 10, 2020

Lyle W. Cayce
Clerk

No. 20-20028
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HERMENEGILDO MARGARITO ESPINOZA ESPINOZA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CR-437-1

Before HIGGINBOTHAM, JONES, and COSTA, Circuit Judges.

PER CURIAM:*

Hermenegildo Margarito Espinoza Espinoza argues that his guilty plea was involuntary because the district court failed to advise him at arraignment that his prior felony conviction was an essential element of his illegal reentry offense under 8 U.S.C. § 1326(b)(1). He also contends that his sentence under § 1326(b)(1) is unconstitutional because it is based on facts

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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neither alleged in his indictment nor proven to a jury beyond a reasonable doubt.

As Espinoza Espinoza concedes, his arguments are 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. Rojas-Luna*, 522 F.3d 502, 505-06 (5th Cir. 2008). Thus, 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, 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.