

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

United States Court of Appeals  
Fifth Circuit

**FILED**

September 10, 2020

Lyle W. Cayce  
Clerk

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No. 20-50131  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

TEODORO REYNOSA-DENOVA, also known as Tedoro Denova-Reynosa, also known as Tedoro Denova, also known as Francis Maeth, also known as Eduardo Nova, also known as Leonardo Denova-Reynosa, also known as Juan Jaimes-Denova, also known as Tedora Reynosa,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:19-CR-219-1

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Before DAVIS, STEWART, and DENNIS, Circuit Judges.

PER CURIAM:\*

Teodoro Reynosa-Denova appeals the 24-month sentence imposed following his guilty plea conviction for illegal reentry after removal. Reynosa-Denova maintains that the statute he was sentenced under, 8 U.S.C. § 1326(b)(1), is unconstitutional because it provides that a defendant may be

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 20-50131

subject to an enhanced sentence even if the fact of his prior conviction is not set forth in the indictment and proven beyond a reasonable doubt. Reynosa-Denova properly concedes that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he raises the issue to preserve it for possible further review. *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).

The Government has filed an unopposed motion for summary affirmance and, alternatively, seeks an extension of time to file its brief. Because the issue is foreclosed, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

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