

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 3, 2020

Lyle W. Cayce  
Clerk

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No. 20-50219  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

MARCO ANTONIO PEREZ-SANCHEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:19-CR-655-1

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Before SOUTHWICK, DUNCAN, and OLDHAM *Circuit Judges.*

PER CURIAM:\*

Appealing the judgment in a criminal case, Marco Antonio Perez-Sanchez challenges his below-guidelines sentence of 45 months of imprisonment and three years of supervised release for illegal reentry. He asserts that the enhancement of his sentence pursuant to 8 U.S.C.

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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§ 1326(b)(1) is unconstitutional because the enhancement is based on facts neither alleged in his indictment nor proven to a jury beyond a reasonable doubt.

As Perez-Sanchez concedes, this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 239-47 (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.