

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 30, 2021

Lyle W. Cayce
Clerk

No. 20-50729
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE RAYMUNDO RODRIGUEZ-YANEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:20-CR-164-1

Before HAYNES, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

Jose Raymundo Rodriguez-Yanez appeals his sentence of 57 months imprisonment and 3 years of supervised release, imposed following his guilty plea conviction of illegal reentry after removal, in violation of 8 U.S.C. § 1326. Raising one issue on appeal, Rodriguez-Yanez argues that the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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recidivism enhancement under § 1326(b) is unconstitutional in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and subsequent decisions because the statute provides for a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. Rodriguez-Yanez 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 has filed an unopposed motion for summary affirmance or, in the alternative, an extension of time to file a brief. As the Government argues, and Rodriguez-Yanez concedes, the sole issue raised on appeal is foreclosed by *Almendarez-Torres*, 523 U.S. at 226-27. *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, the Government's alternative motion for an extension of time to file a brief is DENIED AS MOOT, and the judgment of the district court is AFFIRMED.