

United States Court of Appeals
for the Fifth Circuit

No. 23-10304
CONSOLIDATED WITH
No. 23-10322

United States Court of Appeals
Fifth Circuit

FILED

October 13, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MIGUEL ANGEL SANCHEZ-DELGADO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 3:22-CR-72-1, 3:19-CR-11-1

Before HIGGINBOTHAM, STEWART, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Miguel Angel Sanchez-Delgado appeals his 48-month prison sentence and two-year term of supervised release for illegally reentering the United States after removal, in violation of 8 U.S.C. § 1326(a) and (b)(1). He argues

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

23-10304
c/w No. 23-10322

that his sentence under § 1326(b)(1) violates the Sixth Amendment. Specifically, he contends that, because his indictment did not allege, and he did not admit, that he had a prior felony conviction, his prison sentence should not exceed two years and the term of supervised release should not exceed one year. Sanchez-Delgado has not briefed any argument regarding the consolidated appeal from his supervised release revocation proceeding.

Sanchez-Delgado correctly concedes that his Sixth Amendment argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he wishes to preserve it for further review. *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). The Government has moved without opposition for summary affirmance or, alternatively, for an extension of time to file its brief.

Because the Government's position "is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case," *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), summary affirmance is proper. 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.