

United States Court of Appeals for the Fifth Circuit

No. 23-10474
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 13, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JUAN GARCIA-BERTADILLO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:22-CR-81-1

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Juan Garcia-Bertadillo appeals the sentence for his conviction under 8 U.S.C. § 1326(a) and (b)(2) for illegal reentry after removal. He contends that his sentence exceeds the statutory maximum and is therefore unconstitutional because the district court enhanced it under § 1326(b) based on the fact of a prior conviction that was not alleged in the indictment. He correctly concedes that his argument is foreclosed by *Almendarez-Torres v. United*

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

No. 23-10474

States, 523 U.S. 224 (1998), and explains that he raises this issue 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 a brief.

Because summary affirmance is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the motion for summary affirmance is GRANTED, and the alternative motion for an extension of time to file a brief is DENIED. The judgment is AFFIRMED.