

United States Court of Appeals for the Fifth Circuit

No. 23-10548
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 20, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDUARDO GARCIA BRISENO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:22-CR-37-1

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

PER CURIAM:*

Eduardo Garcia Briseno appeals the sentence for his conviction under 8 U.S.C. § 1326(a) and (b)(1) for illegal reentry into the United States after removal. He contends that the enhancement of his sentence under § 1326(b) is unconstitutional because it was based on the fact of a prior conviction that was not alleged in the indictment and neither found by a jury nor admitted by

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

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him.

Garcia Briseno correctly concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and he raises the issue merely to preserve it for further review. *See United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019). The government therefore has moved without opposition for summary affirmance, or, alternatively, for an extension of time to file its 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, the alternative motion for an extension is DENIED, and the judgment is AFFIRMED.