

United States Court of Appeals for the Fifth Circuit

No. 23-10631
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 13, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE SALOME GALLARDO GRANADOS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-340-1

Before JONES, SOUTHWICK, and HO, *Circuit Judges.*

PER CURIAM:*

Jose Salome Gallardo Granados appeals the 64-month sentence and three-year term of supervised release imposed following his guilty plea conviction for illegal reentry after deportation, in violation of 8 U.S.C. § 1326(a) and (b)(1). Gallardo Granados argues that application of the enhanced penalty range in § 1326(b) violates his due process and Sixth

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

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Amendment constitutional rights because it permits a defendant to be sentenced above the statutory maximum of § 1326(a) based on the fact of a prior conviction that was not alleged in the indictment, admitted to, or found by a jury beyond a reasonable doubt. He correctly concedes that his 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 AS MOOT.