

United States Court of Appeals for the Fifth Circuit

No. 24-10397
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 7, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE OMEROS CARRIZAL-OSORNIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:24-CR-12-1

Before WIENER, HO, and RAMIREZ, *Circuit Judges.*

PER CURIAM:*

Jose Omero Carrizal-Osornia appeals a sentence imposed following his guilty plea conviction for illegal reentry after deportation, in violation of 8 U.S.C. § 1326. He challenges the application of the enhanced penalty range in § 1326(b) as unconstitutional because it permits a defendant to be sentenced above the statutory maximum of § 1326(a) based on a prior

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

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conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. As he correctly concedes, however, this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Carrizal-Osornia raises this issue to preserve it for further review. The Government has filed an unopposed motion 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 Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the district court's judgment is AFFIRMED.