United States Court of Appeals
for the Fifth Circuit

No. 20-50591
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JAIRIN ANTONIO RODEZNO-GUEVARA, *also known as* JAIRIN
GUEVARA, *also known as* JARIN GUEVARA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CR-43-1

Before WIENER, SOUTHWICK, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Jairin Antonio Rodezno-Guevara appeals the 21-month sentence imposed following his guilty plea conviction for being found unlawfully in the United States following a previous removal. He argues that the recidivism

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* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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enhancement under 8 U.S.C. § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. Rodezno-Guevara correctly concedes that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he raises the issue to preserve it for further possible review. *See United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007).

The Government has filed an unopposed motion for summary affirmance and, alternatively, seeks an extension of time to file its brief. Because the issue is foreclosed, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, 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 as moot, and the judgment of the district court is AFFIRMED.