

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 31, 2022

Lyle W. Cayce
Clerk

No. 21-11072
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MANUEL RALIOS-CHAJAL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:20-CR-161-1

Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Manuel Ralios-Chajal appeals his within-guidelines sentence of 46 months of imprisonment and one year of supervised release imposed following his guilty plea conviction for illegal reentry after removal from the United States.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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For the first time on appeal, Ralios-Chajal argues that the district court violated his Fifth and Sixth Amendment rights when it found that he had been removed more than once, that he had engaged in a pattern of repeated illegal conduct, and that his conduct had not been deterred by previous lesser sentences. He contends this factfinding “altered the maximum and minimum reasonable sentence” and thus needed to appear in the indictment and be proven to a jury beyond a reasonable doubt. He concedes that his issue is foreclosed by *United States v. Tuma*, 738 F.3d 681 (5th Cir. 2013), but wishes to preserve it for further review. The Government has moved, unopposed, for summary affirmance or, alternatively, for an extension of time to file its brief.

The district court’s factfinding did not alter the mandatory maximum or minimum sentence. *See Tuma*, 738 F.3d at 693; *see also United States v. Hinojosa*, 749 F.3d 407, 411-13 (5th Cir. 2014). Thus, as Ralios-Chajal concedes and the Government asserts, his argument is foreclosed, such 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), and 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.