United States Court of Appeals
for the Fifth Circuit

No. 21-50211
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ABEL GERARDO HUERTA-VELASQUEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:20-CR-2202-1

Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges*.
PER CURIAM:*

Abel Gerardo Huerta-Velasquez appeals the within-guidelines sentence of 33 months of imprisonment and three years of supervised release imposed following his guilty plea conviction for illegal reentry after removal. He argues that 8 U.S.C. § 1326(b)(1) is unconstitutional because it increases

---

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-50211

the statutory maximum sentence based on the fact of a prior felony conviction neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and he seeks to preserve the issue for further review. The Government filed an unopposed motion for summary affirmance agreeing that the issue is foreclosed and, in the alternative, a motion for an extension of time to file a brief.

As the Government argues, and Huerta-Velasquez agrees, the sole issue raised on appeal is foreclosed by *Almendarez-Torres*. *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). Because the issue is foreclosed, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, 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.