

United States Court of Appeals for the Fifth Circuit

No. 23-10581
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 29, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ARIEL PEREZ-LAINEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-349-1

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Ariel Perez-Lainez appeals his sentence for illegal reentry under 8 U.S.C. § 1326(a) and (b)(1), arguing that the enhancement of his sentence under § 1326(b) is unconstitutional because it is based on facts not alleged in the indictment and neither admitted nor proved beyond a reasonable doubt. He concedes this argument is foreclosed by *Almendarez-Torres v. United*

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

No. 23-10581

States, 523 U.S. 224 (1998), but explains that he wishes to preserve it for further review. The Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time in which to file a brief.

Because Perez-Lainez is correct that his argument is foreclosed, *see United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019), 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, its alternative motion for an extension of time is DENIED, and the judgment of the district court is AFFIRMED.