

United States Court of Appeals for the Fifth Circuit

No. 24-10134
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 23, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SANTIAGO PARKS HOWARD-RIOS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:23-CR-3-1

Before DAVIS, SMITH, and HIGGINSON, *Circuit Judges*.

PER CURIAM:*

Santiago Parks Howard-Rios 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 either admitted or proved beyond a reasonable doubt. He concedes this argument is foreclosed by *Almendarez-Torres v.*

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

United 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 Howard-Rios 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.