

United States Court of Appeals for the Fifth Circuit

No. 24-50319
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RAFAEL PAREDES-HINOJOSA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:23-CR-378-1

Before GRAVES, WILLETT, and WILSON, *Circuit Judges*.

PER CURIAM:*

Rafael Paredes-Hinojosa appeals his conviction and sentence under 8 U.S.C. §§ 1326(a) and (b)(2). For the first time on appeal, he contends that § 1326(b)(2) violates the Constitution by treating a prior conviction that increases the statutory maximum under the statute as a sentencing factor, rather than as an element of the offense. He correctly concedes that his

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

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argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he wishes to preserve it for further review. *See United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019).

Because the only issue before us is foreclosed by precedent and “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), we GRANT the Government’s motion for summary affirmance, and we DENY its alternative motion for an extension of time to file an appellate brief. The judgment of the district court is AFFIRMED.