

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 13, 2021

Lyle W. Cayce
Clerk

No. 20-10974
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LEONEL RODRIGUEZ-CARAVEO,

Defendant—Appellant.

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

Before HAYNES, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

Leonel Rodriguez-Caraveo appeals his conviction for illegal reentry after deportation and his within-guidelines sentence of 32 months of imprisonment and three years of supervised release. He argues for the first time on appeal that 8 U.S.C. § 1326(b) is unconstitutional because it allows a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He also makes the related argument that his guilty plea was involuntary because he was not informed that his prior felony conviction was an element of the offense. He concedes that these issues are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve them for possible Supreme Court review. Agreeing that the issues are foreclosed, the Government has filed a motion for summary affirmance and, in the alternative, a motion for an extension of time to file a brief.

The parties are correct that Rodriguez-Caraveo's arguments are 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). Accordingly, the Government's motion for summary affirmance is GRANTED, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's alternative motion for an extension of time to file a brief is DENIED as moot, and the judgment is AFFIRMED.