

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 18, 2021

Lyle W. Cayce
Clerk

No. 20-11059
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GUSTAVO TREJO-RAMOS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-97-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Gustavo Trejo-Ramos appeals the 33-month, above-guidelines sentence imposed following his guilty plea conviction for illegal reentry after removal from the United States. He contends that his sentence is unconstitutional because his indictment alleged only those facts sufficient for

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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a conviction under 8 U.S.C. § 1326(a) and did not include any allegations of a prior conviction necessary for a sentence enhancement under § 1326(b)(2). He concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998), but seeks to preserve the issue for further review. The Government has 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 Trejo-Ramos concedes, 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, the Government's motion for 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.