

United States Court of Appeals
for the Fifth Circuit

No. 20-50782
CONSOLIDATED WITH
No. 20-50797
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
March 9, 2021
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CELSO MAYOR-CURRUCHICH,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:20-CR-194-1
USDC No. 4:19-CR-473-1

Before JOLLY, ELROD, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Celso Mayor-Curruchich appeals the sentence imposed following his guilty plea conviction for illegal reentry into the United States after having

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

been removed, in violation of 8 U.S.C. § 1326. He also appeals the concomitant revocation of his supervised release related to his prior illegal reentry conviction.

Mayor-Curruchich argues that the enhanced sentencing provision in § 1326(b)(1) is unconstitutional because it increases the statutory maximum sentence based on the fact of a prior felony conviction neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he wishes 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 Mayor-Curruchich concedes, the sole issue raised on appeal is foreclosed by *Almendarez-Torres*. See *Apprendi v. New Jersey*, 530 U.S. 466, 476, 490 (2000); *Almendarez-Torres*, 523 U.S. at 226-27; *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Garza-Lopez*, 410 F.3d 268, 276 (5th Cir. 2005). Because the Government's position "is clearly right as a matter of law so that 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), summary affirmance is appropriate.

Although the appeals of Mayor-Curruchich's illegal reentry conviction and supervised release revocation were consolidated, he has not briefed any challenge to the revocation or the revocation sentence. Consequently, he has waived any challenge to the revocation and revocation sentence on appeal. See *United States v. Thames*, 214 F.3d 608, 611 n.3 (5th Cir. 2000); FED. R. APP. P. 28(a)(8)(A).

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Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgments of the district court are AFFIRMED.