

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 24, 2021

Lyle W. Cayce
Clerk

No. 21-10511
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROSA LEIJA-PERALTA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-120-1

Before DAVIS, JONES, and ELROD, *Circuit Judges.*

PER CURIAM:*

Rosa Leija-Peralta appeals the 96-month, within guidelines range sentence imposed after her guilty plea conviction for illegal reentry by a removed alien, pursuant to 8 U.S.C. § 1326(a). Leija-Peralta contends that her sentence violates due process because it exceeds the statutory maximum

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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for the offense charged in the indictment. She further asserts that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is no longer valid in light of the United States Supreme Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013). Leija-Peralta concedes that this issue is foreclosed by current precedent, but she seeks to preserve the issue for future review. The Government moves for summary affirmance or, alternatively, for an extension of time in which to file a merits brief.

The parties are correct that Leija-Peralta's argument is clearly foreclosed by *Almendarez-Torres*. See *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007); *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014). 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 is DENIED. The judgment is AFFIRMED.