

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 30, 2022

Lyle W. Cayce
Clerk

No. 21-10845
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE CARREON-GONZALEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-118-1

Before WIENER, DENNIS, and HAYNES, *Circuit Judges.*

PER CURIAM:*

Jose Carreon-Gonzalez appeals his conviction for illegal reentry after removal and his sentence of 46 months of imprisonment and three years of supervised release. He argues that his sentence exceeded the statutory maximum and thus violated his due process rights because the court applied

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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 statutory sentence enhancement under 8 U.S.C. § 1326(b) based on facts that were not alleged in the indictment. Carreon-Gonzalez concedes the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but seeks to preserve it for further review. The Government has filed an unopposed motion for summary affirmance.

The parties are correct that Carreon-Gonzalez's argument is foreclosed by *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Accordingly, the Government's motion for summary affirmance is GRANTED, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), its alternative motion for an extension of time to file a brief is DENIED, and the district court's judgment is AFFIRMED.