

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

July 13, 2021

Lyle W. Cayce  
Clerk

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No. 21-50080  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

GENARO ALBERTO NUNEZ-UGARTE,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:20-CR-338-1

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Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM: \*

Genaro Alberto Nunez-Ugarte appeals the 37-month prison sentence imposed following his guilty plea conviction for illegal reentry after deportation. He argues that his sentence was imposed under an unconstitutional statute, 8 U.S.C. § 1326(b). He correctly concedes that his

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but raises the issue to preserve for further possible review. *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).

The Government has filed an unopposed motion for summary affirmance and, alternatively, seeks an extension of time to file its brief. 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, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.