

United States Court of Appeals
for the Fifth Circuit

No. 21-50369
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 19, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ALEXI LENIN ARGUETA-URBINA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:19-CR-1087-1

Before SOUTHWICK, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Alexi Lenin Argueta-Urbina appeals the 57-month, within guidelines range sentence imposed after his guilty plea conviction for illegal reentry by a removed alien, pursuant to 8 U.S.C. § 1326(a). Argueta-Urbina contends that his sentence is unconstitutional because § 1326(b)(1), which was used to

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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enhance his sentence based on his having been previously deported following a conviction for a felony offense, is no longer valid in light of the United States Supreme Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013). Argueta-Urbina concedes that this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he 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 Argueta-Urbina's argument is foreclosed by *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014) ("We recently acknowledged that the *Almendarez-Torres* exception survived *Alleyne*."); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007) ("*Almendarez-Torres* remains binding precedent until and unless it is officially overruled by the Supreme Court."). 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 as unnecessary.

AFFIRMED.