

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 8, 2022

Lyle W. Cayce
Clerk

No. 22-10645
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BERNARDINO BERRUN-TORRES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-16-1

Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Bernardino Berrun-Torres appeals his conviction and sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326(a) and (b)(2). Berrun-Torres contends, as he did in the district court, that it violates the Constitution to treat a prior conviction that increases the statutory maximum under § 1326(b) as a sentencing factor, rather than as an element of the

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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offense. Berrun-Torres concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve it for further review. Agreeing that the issue is foreclosed, the government moves without opposition for summary affirmance, or, alternatively, for an extension of time to file its brief.

The parties are correct that Berrun-Torres's assertion is foreclosed by *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019). Accordingly, the 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 to file a brief is DENIED, and the judgment is AFFIRMED.