

United States Court of Appeals for the Fifth Circuit

No. 24-10978
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 25, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CESAR EDGARDO CASTILLO-RODRIGUEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:24-CR-152-1

Before HIGGINBOTHAM, JONES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Cesar Edgardo Castillo-Rodriguez appeals the 46-month prison term imposed for his conviction for illegal presence in the United States following removal. He argues that the district court was obligated, under *Rita v. United States*, 551 U.S. 338 (2007), to address his nonfrivolous arguments for a downward variance. We review this forfeited objection for plain error. *See*

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

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United States v. Coto-Mendoza, 986 F.3d 583, 585-86 (5th Cir. 2021). The record reflects that the district court did not commit error, plain or otherwise, by failing to reference the arguments for a lower sentence. *See Rita*, 551 U.S. at 343-45, 356, 358-59; *Coto-Mendoza*, 986 F.3d at 584, 586-87 & nn.4-6.

Castillo-Rodriguez also argues that the district court erred by imposing a sentence above the two-year statutory maximum in 8 U.S.C. § 1326(a). He correctly concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226 (1998). *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019); *see also Erlinger v. United States*, 602 U.S. 821, 838 (2024) (explaining that *Almendarez-Torres* “persists as a narrow exception permitting judges to find only the fact of a prior conviction” (internal quotation marks and citation omitted)).

Although Castillo-Rodriguez’s appeal can be resolved without further briefing, summary affirmance as to the first issue is not appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government’s motion for summary affirmance is DENIED. The alternative motion for an extension of time to file a brief on the merits is DENIED as unnecessary. The judgment of the district court is AFFIRMED.