

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 10, 2025

Lyle W. Cayce
Clerk

No. 24-50636
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DEGNY OSHMARLIN MOLINA VILLATORO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:23-CR-2531-1

Before KING, SOUTHWICK, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Degny Oshmarlin Molina Villatoro appeals his sentence for illegal reentry into the United States after having been removed, in violation of 8 U.S.C. § 1326. He contends that his sentence exceeds the statutory maximum and is therefore unconstitutional because it was enhanced based on facts that were neither alleged in the indictment nor found by a jury

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

No. 24-50636

beyond a reasonable doubt. However, he acknowledges that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and merely raises this issue to preserve it for further review. The Government has moved without opposition for summary affirmance, or, alternatively, for an extension of time to file a brief.

Because summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), 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 district court's judgment is AFFIRMED.