

United States Court of Appeals for the Fifth Circuit

No. 22-10585
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
December 9, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DAVID ARROYO-RAMON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-14-1

Before DAVIS, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

David Arroyo-Ramon appeals his conviction and sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326(a) and (b)(1). He argues that treating a prior felony conviction that increases the statutory maximum under § 1326(b) as a sentencing factor, rather than a separate element of the offense, violates the Constitution. He also argues that, for that

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

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same reason, his two-year term of supervised release is unlawful. Arroyo-Ramon concedes that his arguments are foreclosed and indicates that he wishes to preserve them for further review. The Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file a brief.

The parties are correct that the issues raised on appeal are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019); *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014). Summary affirmance is therefore 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 district court's judgment is AFFIRMED.