

United States Court of Appeals
for the Fifth Circuit

No. 20-10601
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MANUEL ESPINOZA-INFANTE,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-8-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Manuel Espinoza-Infante appeals the 12-month sentence imposed after his guilty plea conviction for illegal reentry after deportation. He asserts that his sentence was improperly imposed pursuant to 8 U.S.C. § 1326(b)(1). Espinoza-Infante argues that the enhanced recidivism penalties of § 1326(b)

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-10601

are elements of the offense that must be alleged in the indictment and proven to a jury beyond a reasonable doubt because they increase the maximum term of imprisonment. He correctly acknowledges that his claim is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he presents the issue to preserve it for further possible review. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007).

The Government has filed an unopposed motion for summary affirmance and, in the alternative, seeks an extension of time to file its brief. Because the sole issue raised on appeal is foreclosed, summary affirmance is proper. 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 an appellate brief is DENIED, and the judgment of the district court is AFFIRMED.