

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

January 19, 2021

Lyle W. Cayce  
Clerk

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No. 20-10813  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

PEDRO RODRIGUEZ -CALDERON,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:20-CR-78-1

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Before HAYNES, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:\*

Pedro Rodriguez-Calderon appeals the 37-month, within-guidelines sentence imposed following his guilty plea conviction for illegal reentry after removal from the United States. He contends that his sentence is unconstitutional because his indictment alleged only those facts sufficient for

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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a conviction under 8 U.S.C. § 1326(a) and did not include any allegations of a prior conviction necessary for a sentence enhancement under § 1326(b)(2). He concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27 (1998), but seeks to preserve the issue for further review. The Government has filed an unopposed motion for summary affirmance, agreeing that the issue is foreclosed, and in the alternative, a motion for an extension of time to file a brief.

As the Government argues, and Rodriguez-Calderon concedes, the sole issue raised on appeal is foreclosed by *Almendarez-Torres*. 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). Because the issue is foreclosed, summary affirmance is 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, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.