

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

December 22, 2021

Lyle W. Cayce  
Clerk

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No. 21-10492  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

EDGAR GARZA-LIMONES,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:20-CR-352-1

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Before WIENER, DENNIS, and HAYNES, *Circuit Judges.*

PER CURIAM:\*

Edgar Garza-Limonés appeals his sentence of 72 months in prison and three years of supervised release, which the district court imposed following his guilty plea conviction for illegal reentry in violation of 8 U.S.C. § 1326. He was sentenced under § 1326(b), which allows for a sentence above the

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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otherwise applicable statutory maximum under § 1326(a), provided that the defendant was removed after sustaining a conviction for certain offenses. *See also* 18 U.S.C. § 3583(b) (providing for increased maximum term of supervised release). Garza-Limones contends that because the indictment did not allege such a prior conviction, he was charged only under § 1326(a) and that his sentence exceeds the statutory maximum punishment for such an offense. He concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the issue for further review. The Government has moved for summary affirmance, asserting that Garza-Limones's argument is foreclosed.

Garza-Limones's argument is indeed foreclosed by *Almendarez-Torres*. *See United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Rojas-Luna*, 522 F.3d 502, 505-06 (5th Cir. 2008). Accordingly, the motion for summary affirmance is GRANTED, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's motion for an extension of time to file a brief is DENIED as unnecessary, and the judgment of the district court is AFFIRMED.