

United States Court of Appeals for the Fifth Circuit

No. 22-10784
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 27, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JUAN VICTOR QUEZADA-LARA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-105-1

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

PER CURIAM:*

Juan Victor Quezada-Lara pleaded guilty to illegal reentry following removal and was sentenced within the advisory guidelines range to 30 months in prison. He asserts that his sentence exceeds the statutory maximum term of imprisonment under 8 U.S.C. § 1326(a) and contends that his indictment did not allege an offense punishable pursuant to § 1326(b) because it failed to

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

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identify a prior conviction. He suggests that his sentence violates due process because § 1326(b) permits the imposition of a sentence above the otherwise applicable statutory maximum established by § 1326(a) based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt.

Quezada-Lara concedes that his claim is foreclosed and states that he wishes to preserve it for further review. The Government has moved for summary affirmance or, alternatively, for an extension of time to file a brief.

The parties are correct that the issue raised on appeal is 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). Thus, 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, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.