

United States Court of Appeals for the Fifth Circuit

No. 22-50157
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 1, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LETICIA LERMA-PICHARDO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-867-1

Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Letitia Lerma-Pichardo appeals her sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326(a) and (b)(2). Lerma-Pichardo contends, for the first time on appeal, that it violates the Constitution to treat a prior conviction that increases the statutory maximum under § 1326(b) as a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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sentencing factor rather than as an element of the offense. Lerma-Pichardo concedes that this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but she seeks to preserve it for future review. In addition, she has filed an unopposed motion for summary disposition.

As Lerma-Pichardo concedes, the sole issue raised on appeal is foreclosed. 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). Because her position “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case,” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), summary disposition is proper. Accordingly, the motion for summary disposition is GRANTED, and the judgment is AFFIRMED.