

United States Court of Appeals for the Fifth Circuit

No. 24-50708
CONSOLIDATED WITH
No. 24-50709

United States Court of Appeals
Fifth Circuit

FILED

March 24, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE REYES MENA-MENA,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:23-CR-124-1,
4:24-CR-97-1

Before GRAVES, WILLETT, and WILSON, *Circuit Judges*.

PER CURIAM:*

Jose Reyes Mena-Mena appeals the sentence imposed following his guilty plea conviction for illegal reentry in violation of 8 U.S.C. § 1326. On appeal, he challenges the application of the enhanced penalty range in § 1326(b) as unconstitutional because it permits a defendant to be sentenced

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

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above the statutory maximum of § 1326(a) based on a prior conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. He expressly declines to raise any issue regarding the consolidated appeal from his supervised release revocation proceeding.

The Government has filed a motion for summary affirmance or, alternatively, for an extension of time to file a brief. Mena-Mena takes no position on the motion, but he correctly concedes that the asserted issue 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). He raises this issue to preserve it for further review.

Because summary affirmance is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), 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 district court's judgments are AFFIRMED.