

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Rafael Ayala-Solorio

No. 20-10170, United States Court of Appeals for the Fifth Circuit (October 12, 2020)

OPINION

PER CURIAM.

Case: 20-10170 Document: 00515597649 Page: 1 Date Filed: 10/12/2020 United States Court of Appeals for the Fifth Circuit United States Court of Appeals Fifth Circuit FILED October 12, 2020 No. 20-10170 Lyle W. Cayce Summary Calendar Clerk United States of America, Plaintiff—Appellee, versus Rafael Ayala-Solorio, Defendant—Appellant. Appeal from the United States District Court for the Northern District of Texas USDC No. 4:19-CR-265-1 Before Clement, Higginson, and Engelhardt, Circuit Judges.

Per Curiam:* Rafael Ayala-Solorio appeals his sentence of 120 months of imprisonment 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 argues that the recidivism enhancement set forth in * Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

Case: 20-10170 Document: 00515597649 Page: 2 Date Filed: 10/12/2020 No. 20-10170 § 1326(b) is an element of the offense that must be alleged in the indictment and proven beyond a reasonable doubt to a jury. He therefore argues that his guilty plea is invalid because he was not advised of an element of the offense and that his sentence is illegal because the application of § 1326(b) increased the statutory maximum terms of imprisonment and supervised release.

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 moves for summary affirmance, asserting that Ayala-Solorio's argument is foreclosed. Alternatively, the Government seeks an extension of time to file a brief.

The parties are correct that Ayala-Solorio's claim is 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, summary affirmance is GRANTED, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), 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. 2

