

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROSA LEIJA-PERALTA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Brandon Beck

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Appendix A Judgment and Opinion of Fifth Circuit, CA No. 21-10511,
United States v. Leija-Peralta, 2021 WL 5513521, at *1 (5th Cir.
Nov. 24, 2021) (unpublished).

Appendix B Judgment and Sentence of the United States District
Court for the Northern District of Texas, entered May 14, 2021.
United States v. Leija-Peralta, Dist. Court 4:20-CR-0120-Y-1.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 21-10511
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 24, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ROSA LEIJA-PERALTA,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CR-120-1

Before DAVIS, JONES, and ELROD, *Circuit Judges.*

PER CURIAM:*

Rosa Leija-Peralta appeals the 96-month, within guidelines range sentence imposed after her guilty plea conviction for illegal reentry by a removed alien, pursuant to 8 U.S.C. § 1326(a). Leija-Peralta contends that her sentence violates due process because it exceeds the statutory maximum

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-10511

for the offense charged in the indictment. She further asserts that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is no longer valid in light of the United States Supreme Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013). Leija-Peralta concedes that this issue is foreclosed by current precedent, but she seeks to preserve the issue for future review. The Government moves for summary affirmance or, alternatively, for an extension of time in which to file a merits brief.

The parties are correct that Leija-Peralta's argument is clearly foreclosed by *Almendarez-Torres*. See *United States v. Pineda-Arellano*, 492 F.3d 624, 625 (5th Cir. 2007); *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014). Accordingly, the Government's motion for 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 is DENIED. The judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

ROSA LEIJA-PERALTA

Case Number: 4:20-CR-120-Y(1)

M. Levi Thomas, assistant U.S. attorney
John J. Stickney, attorney for the defendant

On January 13, 2021, the defendant, Rosa Leija-Peralta, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
8 U.S.C. § 1326(a) and (b)(1)/(2)	Illegal Reentry After Deportation	January 10, 2019	1

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed May 11, 2021.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed May 14, 2021.

IMPRISONMENT

The defendant, Rosa Leija-Peralta, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 96 months on count one of the one-count indictment.

The Court recommends that the defendant be enrolled in the Institution Residential Drug Abuse Treatment Program, if eligible.

The defendant is remanded to the custody of the United States marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on count one of the one-count information.

Under 18 U.S.C. § 3583(d), as a condition of supervised release upon the completion of the sentence of imprisonment, the defendant shall be surrendered by the Federal Bureau of Prisons to a duly authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a condition of supervised release, if ordered deported, the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions recommended by the U.S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapons;
- cooperate in the collection of DNA as directed by the probation officer, as authorized by the Justice for All Act of 2004;
- report in person to the probation office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry;
- not illegally re-enter the United States, if deported, removed, or allowed voluntary departure; and
- refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States marshal

BY _____
deputy marshal