

United States Court of Appeals for the Fifth Circuit

No. 24-50570
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 11, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EBLIN OMAR ARDON-AMAYA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:23-CR-2801-1

Before SMITH, STEWART, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Eblin Ardon-Amaya appeals following his conviction of illegal reentry in violation of 8 U.S.C. § 1326, contending for the first time on appeal that the sentencing enhancement in § 1326(b) is unconstitutional. The government moves for summary affirmance or, alternatively, for an extension of time to file its brief. Ardon-Amaya takes no position on the motion but concedes that his argument is foreclosed by *Almendarez-Torres v. United States*,

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

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523 U.S. 224 (1998).

The argument is foreclosed. *See United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019); *see also Erlinger v. United States*, 602 U.S. 821, 838 (2024) (explaining that *Almendarez-Torres* “persists as a narrow exception permitting judges to find only the fact of a prior conviction” (internal quotation marks and citation omitted)). Therefore, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the motion for summary affirmance is GRANTED, the alternative motion for an extension of time is DENIED, and the judgment is AFFIRMED.