

United States Court of Appeals for the Fifth Circuit

No. 25-50985
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 24, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LUIS JOEL GONZALEZ-PENA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:24-CR-1511-1

Before WIENER, STEWART, and RICHMAN, *Circuit Judges*.

PER CURIAM:*

Luis Joel Gonzalez-Pena appeals following his conviction and sentence for illegal reentry into the United States under 8 U.S.C. § 1326(a), arguing for the first time that the enhancement in § 1326(b) is unconstitutional. The Government has moved for summary affirmance, or alternatively, for an extension of time in which to file a brief. Even though

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

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Gonzalez-Pena takes no position on the motion for summary affirmance, he acknowledges that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

The parties are correct that Gonzalez-Pena’s argument is foreclosed by circuit precedent. *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)). Summary affirmance is therefore appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government’s motion for summary affirmance is GRANTED, its alternative motion for an extension of time is DENIED, and the judgment of the district court is AFFIRMED.