

United States Court of Appeals for the Fifth Circuit

No. 24-50473
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 22, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DANIEL BONILLA-CARBAJAL,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:22-CR-158-1

Before HIGGINBOTHAM, JONES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Daniel Bonilla-Carbajal appeals following his guilty plea conviction for illegal reentry into the United States under 8 U.S.C. § 1326, arguing for the first time on appeal that the statutory sentence enhancement in § 1326(b) is unconstitutional. The Government moves for summary affirmance or, alternatively, an extension of time in which to file an appellate brief. Bonilla-

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

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Carbajal takes no position on the motion but concedes that his argument is foreclosed.

As Bonilla-Carbajal concedes, his argument 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); 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 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, the alternative motion for an extension of time is DENIED, and the judgment of the district court is AFFIRMED.