

United States Court of Appeals for the Fifth Circuit

No. 23-50866
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 13, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELAUTERIO AGUILAR-TORRES,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:23-CR-272-1

Before JONES, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Elauterio Aguilar-Torres appeals his conviction for illegal reentry into the United States, in violation of 8 U.S.C. § 1326(a) and (b)(1). He contends that § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt.

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

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However, he concedes that this argument is foreclosed by the Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and merely raises this issue to preserve it for further review. The Government has moved without opposition for summary affirmance, or, alternatively, for an extension of time to file a brief.

Because summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the district court's judgment is AFFIRMED.