

United States Court of Appeals
for the Fifth Circuit

No. 24-50474
CONSOLIDATED WITH
No. 24-50475

United States Court of Appeals
Fifth Circuit

FILED

January 15, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LUIS ALFREDO FELIX-VARGAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC Nos. 3:23-CR-2462-1,
3:22-CR-1895-1

Before GRAVES, WILLETT, and WILSON, *Circuit Judges*.

PER CURIAM: *

Luis Alfredo Felix-Vargas appeals the sentence imposed following his guilty plea conviction for illegal reentry in violation of 8 U.S.C. § 1326. On appeal, Felix-Vargas challenges the application of the enhanced penalty range in § 1326(b) as unconstitutional because it permits a defendant to be

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

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sentenced above the statutory maximum of § 1326(a) based on a prior conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. He has not briefed any argument regarding the consolidated appeal from his supervised release revocation proceeding.

As he correctly concedes, this issue 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). He raises this issue to preserve it for further review. The Government has filed an unopposed motion 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 AS MOOT, and the district court's judgment is AFFIRMED.