

# United States Court of Appeals for the Fifth Circuit

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No. 24-50507  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 7, 2025

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

RAFAEL REYES-CALVARIO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:23-CR-2439-1

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Before WIENER, HO, and RAMIREZ, *Circuit Judges.*

PER CURIAM:\*

Defendant-Appellant Rafael Reyes-Calvario appeals following his conviction for illegal reentry in violation of 8 U.S.C. § 1326(a), arguing that the statutory sentencing enhancement in § 1326(b) is unconstitutional. He concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and the government has filed an unopposed

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

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motion for summary affirmance or, alternatively, for an extension of time in which to file a brief.

Because the argument is foreclosed, *see United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019), 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 of the district court is AFFIRMED.