

United States Court of Appeals for the Fifth Circuit

No. 24-50824
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 8, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

OMAR ROMAN-CASTORENA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:24-CR-1345-1

Before ELROD, *Chief Judge*, HAYNES, and DUNCAN, *Circuit Judges*.

PER CURIAM:*

Omar Roman-Castorena appeals following his conviction for illegal reentry in violation of 8 U.S.C. § 1326, arguing for the first time on appeal that the statutory sentencing enhancement in § 1326(b) is unconstitutional. The Government moves for summary affirmance or, alternatively, for an extension of time in which to file a brief. Roman-Castorena takes no position

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

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on the motion but concedes that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

The argument is foreclosed. *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)). Therefore, 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.