

United States Court of Appeals for the Fifth Circuit

No. 25-50804
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 9, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

APOLONIO GUERRERO-MUNOZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:25-CR-1075-1

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

PER CURIAM:*

Apolonio Guerrero-Munoz appeals the sentence imposed upon his conviction for illegal entry into the United States, arguing that the sentencing enhancement in 8 U.S.C. § 1326(b) is unconstitutional. He concedes that this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and seeks to preserve the issue for possible further review. The

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

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Government moves for summary affirmance or, alternatively, for an extension of time in which to file a merits brief. Guerrero-Munoz takes no position on the motion for summary affirmance.

The parties are correct that the argument is foreclosed and that summary affirmance is appropriate. *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)); *see generally Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government’s motion for summary affirmance is GRANTED, its alternative motion for an extension of time is DENIED, and the judgment is AFFIRMED.