

# United States Court of Appeals for the Fifth Circuit

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No. 24-10083  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

July 9, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

DANIEL SALGADO-MELENDZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:22-CR-309-1

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Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:\*

Daniel Salgado-Melendez appeals his sentence for illegal reentry in violation of 8 U.S.C. § 1326. For the first time on appeal, he challenges the application of the enhanced penalty range in § 1326(b) as unconstitutional because it permits a defendant to be 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. As Salgado-Melendez cor-

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

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rectly concedes, that 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 motion is GRANTED, the government's alternative motion for an extension to file its brief is DENIED, and the judgment is AFFIRMED.