

United States Court of Appeals
for the Fifth Circuit

No. 24-50609
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 3, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANTONIO RODRIGO DOWNER,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:23-CR-2745-1

Before HIGGINBOTHAM, JONES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Antonio Rodrigo Downer appeals following his conviction for illegal reentry in violation of 8 U.S.C. § 1326(a), arguing for the first time on appeal that the statutory sentencing enhancement in § 1326(b) is unconstitutional. The Government has filed a motion for summary affirmance or, alternatively, for an extension of time in which to file a brief. While Downer takes no

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

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

The parties are correct that 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)). Summary affirmance is therefore 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.