

United States Court of Appeals for the Fifth Circuit

No. 24-50817
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 6, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE ANDRES CABANAS-RUIZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:24-CR-827-1

Before SMITH, STEWART, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Jose Andres Cabanas-Ruiz appeals his sentence under 8 U.S.C. § 1326(b)(1). He contends that the statute violates the Constitution by treating a prior conviction that increases the statutory maximum as a sentencing factor rather than an element of the offense. He correctly concedes that the argument is foreclosed by *Almendarez-Torres v. United*

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

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States, 523 U.S. 224 (1998), but wishes to preserve it for further review. *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)).

Because the only issue before us is foreclosed by precedent and “there can be no substantial question as to the outcome of the case,” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), we GRANT the Government’s motion for summary affirmance, and we DENY its alternative motion for an extension of time to file an appellate brief. The judgment of the district court is AFFIRMED.