

United States Court of Appeals
for the Fifth Circuit

No. 24-50950
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 24, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DAVID GAMBOA-HERRERA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:24-CR-1252-1

Before JONES, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

David Gamboa-Herrera appeals the sentence imposed following his guilty plea conviction 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 under § 1326(a) based on a prior

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

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conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. As he correctly concedes, this 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 a motion for summary affirmance or, alternatively, for an extension of time to file a brief. Gamboa-Herrera takes no position on the Government’s motion.

Because summary affirmance is appropriate, *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government’s motion for summary affirmance is GRANTED, the Government’s alternative motion for an extension of time to file a brief is DENIED AS MOOT, and the district court’s judgment is AFFIRMED.