

# United States Court of Appeals for the Fifth Circuit

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No. 25-10968  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 16, 2026

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOSE LERMA-ROBLEDO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:25-CR-42-1

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Before STEWART, GRAVES, and OLDHAM, *Circuit Judges*.

PER CURIAM:\*

Jose Lerma-Robledo appeals following his conviction and sentence under 8 U.S.C. § 1326(a) for illegal reentry into the United States after deportation, arguing that the statutory sentencing enhancement in § 1326(b) is unconstitutional. Lerma-Robledo concedes that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and seeks to

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

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preserve it for possible Supreme Court review. The Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file its brief.

As he concedes, Lerma-Robledo's 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 thus appropriate. *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.