

United States Court of Appeals  
for the Fifth Circuit

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No. 25-11036  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

April 16, 2026

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

TEODORO CHAVEZ-FERNANDEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:25-CR-31-1

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

PER CURIAM:\*

Teodoro Chavez-Fernandez appeals the 27-month prison term imposed for his conviction for illegally reentering the United States. He argues that the district court was obligated, under *Rita v. United States*, 551 U.S. 338 (2007), to address his nonfrivolous arguments for a downward variance. Reviewing this forfeited argument for plain error, we conclude,

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

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based on the record, that there was no error, plain or otherwise. *See Rita*, 551 U.S. at 343-45, 356, 358-59; *United States v. Coto-Mendoza*, 986 F.3d 583, 584, 586-87 & nn.3-6 (5th Cir. 2021).

In addition, Chavez-Fernandez argues that the district court erred by imposing a sentence above the two-year statutory maximum in 8 U.S.C. § 1326(a). He correctly concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226 (1998). *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)).

Although Chavez-Fernandez’s appeal can be resolved without further briefing, summary affirmance is not appropriate as to the first issue. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969); *United States v. Bailey*, 924 F.3d 1289, 1290 (5th Cir. 2019). The Government’s motion for summary affirmance is DENIED. The alternative motion for an extension of time to file a brief on the merits is DENIED. The judgment of the district court is AFFIRMED.