

# United States Court of Appeals for the Fifth Circuit

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No. 25-11360  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 30, 2026

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOSE MAURILLIO ZERTUCHE-REYNA,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:25-CR-61-1

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Before KING, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:\*

Jose Maurillio Zertuche-Reyna appeals his sentence for illegally reentering the United States after having been removed, in violation of 8 U.S.C. § 1326. He contends that § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond

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

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a reasonable doubt. However, he acknowledges that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and he raises this issue to preserve it for further review. The Government has moved without opposition for summary affirmance, or, alternatively, for an extension of time to file a brief.

The parties are correct that the sole argument on appeal 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). Summary affirmance is therefore appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED AS MOOT, and the district court's judgment is AFFIRMED.