

United States Court of Appeals for the Fifth Circuit

No. 25-50156
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 9, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GUADALUPE GONZALEZ-CONTRERAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:24-CR-264-1

Before RICHMAN, SOUTHWICK, and WILLETT, *Circuit Judges*.

PER CURIAM:*

Guadalupe Gonzalez-Contreras appeals his conviction and sentence for illegal reentry into the United States under 8 U.S.C. § 1326. For the first time on appeal, he argues that the recidivism enhancement in § 1326(b) is unconstitutional because its application allowed a sentence above the otherwise-applicable statutory maximum, based on facts that were neither

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

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alleged in the information nor found by a jury beyond a reasonable doubt. The Government has moved for summary affirmance or, alternatively, for an extension of time to file its brief. While Gonzalez-Contreras takes no position on the Government's motion, he acknowledges his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and seeks to preserve it for possible Supreme Court review.

Gonzalez-Contreras is correct that his 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. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time is DENIED.