

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 17, 2025

Lyle W. Cayce
Clerk

No. 25-50454
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELISEO TELLO-ALVARADO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:23-CR-137-1

Before DENNIS, ENGELHARDT, and WILSON, *Circuit Judges*.

PER CURIAM:*

Eliseo Tello-Alvarado appeals his sentence following guilty-plea conviction for illegal reentry in violation of 8 U.S.C. § 1326(a) and (b)(1). He argues for the first time on appeal that the application of the enhanced penalty range in § 1326(b) is unconstitutional because it allows a sentence

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

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above the § 1326(a) statutory maximum based on a prior conviction not alleged in the indictment or found by a jury.

He concedes that *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998), forecloses his argument. *See Erlinger v. United States*, 602 U.S. 821, 838 (2024). He raises the issue to preserve it for further review. The Government moves for summary affirmance or, alternatively, for an extension of time to file a brief. Tello-Alvarado takes no position on the Government's motion.

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