

United States Court of Appeals for the Fifth Circuit

No. 25-50640
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 7, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DANIEL MARTINEZ-LOYOLA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:25-CR-464-1

Before SMITH, HIGGINSON, and WILSON, *Circuit Judges.*

PER CURIAM:*

Daniel Martinez-Loyola appeals his sentence for illegal reentry into 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 a reasonable doubt. He acknowledges that this argument is foreclosed by *Almendarez-*

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

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Torres v. United States, 523 U.S. 224 (1998), and that he raises this issue just 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 Martinez-Loyola's 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) (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 therefore appropriate. See *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 to file a brief is DENIED, and the judgment is AFFIRMED.