

United States Court of Appeals for the Fifth Circuit

No. 25-50644
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 2, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE SALVADOR MELARA-MURILLO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:25-CR-18-1

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

PER CURIAM:*

Jose Salvador Melara-Murillo appeals following his guilty plea conviction and sentence under 8 U.S.C. § 1326(a) for illegal reentry into the United States after deportation, arguing that the sentencing enhancement in § 1326(b) is unconstitutional. The Government moves for summary affirmance or, alternatively, for an extension of time to file a brief. Although

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

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Melara-Murillo takes no position on the motion for summary affirmance, he acknowledges his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and raises the issue to preserve it for further review.

Melara-Murillo 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 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 is DENIED, and the district court’s judgment is AFFIRMED.