

United States Court of Appeals for the Fifth Circuit

No. 25-50672
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 30, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE LEONEL BELTRAN-NINO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:24-CR-3375-1

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

PER CURIAM:*

Jose Beltran-Nino appeals following his conviction of illegal reentry in violation of 8 U.S.C. § 1326(a), contending, for the first time on appeal, that the statutory sentencing enhancement in § 1326(b) is unconstitutional. He concedes that that theory is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). The government has filed a motion for summary affirmance or, alternatively, for an extension of time in which to file its brief.

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

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Beltran-Nino takes no position on the motion for summary affirmance.

The parties are correct that Beltran-Nino's 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 motion for summary affirmance is GRANTED, the alternate motion for an extension of time is DENIED, and the judgment is AFFIRMED.