

United States Court of Appeals for the Fifth Circuit

No. 25-50922
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 24, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FELIX ANTONIO ESCOBAR,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:24-CR-2276-1

Before JONES, HO, and WILSON, *Circuit Judges*.

PER CURIAM:*

Felix Antonio Escobar appeals his sentence under 8 U.S.C. § 1326. He argues that § 1326(b) is unconstitutional because it treats a prior conviction that increases the statutory maximum as a sentencing factor, rather than as an element of the offense. The Government moves for summary affirmance or, alternatively, an extension of time in which to file a

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

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brief. Escobar takes no position on the motion but concedes that his argument is foreclosed by the Supreme Court’s decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

Escobar correctly concedes 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)). Thus, summary affirmance is 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, the alternative motion for an extension of time to file a brief is DENIED AS MOOT, and the district court’s judgment is AFFIRMED.