

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

May 18, 2026

Lyle W. Cayce  
Clerk

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No. 25-50930  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

AGUSTIN RUIZ-VAZQUEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:25-CR-266-1

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

PER CURIAM:\*

Agustin Ruiz-Vazquez challenges his sentence for illegal reentry under 8 U.S.C. § 1326(b)(1), asserting that the statute is unconstitutional because it treats a prior conviction that increases the statutory maximum as a sentencing factor rather than an element of the offense. He correctly concedes that the argument is foreclosed by *Almendarez-Torres v. United*

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

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*States*, 523 U.S. 224 (1998), but wishes to preserve it for further review. *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).

Because the only issue before us is foreclosed by precedent and “there can be no substantial question as to the outcome of the case,” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), we GRANT the Government’s motion for summary affirmance and DENY its alternative motion for an extension of time to file a brief. The judgment of the district court is AFFIRMED.