

# United States Court of Appeals for the Fifth Circuit

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No. 25-50971  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

May 14, 2026

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOSE CUTBERTO ARELLANO-ALVARADO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:25-CR-1399-1

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Before HIGGINBOTHAM, ENGELHARDT, and RAMIREZ, *Circuit Judges.*

PER CURIAM:\*

Jose Cutberto Arellano-Alvarado appeals following his conviction for illegal reentry in violation of 8 U.S.C. § 1326(a), arguing on appeal that the statutory sentencing enhancement in § 1326(b) is unconstitutional. He concedes this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and the Government has filed a motion for summary

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

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affirmance or, alternatively, for an extension of time in which to file a brief. Arellano-Alvarado takes no position on the motion.

The parties are correct that the 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” (citation modified)). 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 is DENIED, and the judgment of the district court is AFFIRMED.