

United States Court of Appeals for the Fifth Circuit

No. 25-50978
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 9, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FRANCISCO RODRIGUEZ-SALDANA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:24-CR-374-1

Before KING, HAYNES, and HO, *Circuit Judges.*

PER CURIAM:*

Francisco Rodriguez-Saldana appeals following his conviction and sentence for illegal reentry under 8 U.S.C. § 1326(a) and (b), arguing for the first time on appeal that the sentencing enhancement in § 1326(b) is unconstitutional. The Government has moved for summary affirmance or, alternatively, for an extension of time in which to file a brief. Although

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

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Rodriguez-Saldana 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 seeks to preserve the issue for possible Supreme Court review.

The parties are correct that Rodriguez-Saldana's sole 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 thus 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 is DENIED as moot, and the judgment of the district court is AFFIRMED.