

United States Court of Appeals
for the Fifth Circuit

No. 26-50154
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 6, 2026

Thomas B. Plunkett, III
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LEO DAN OLIVERA-HERNANDEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:25-CR-2097-1

Before WILLETT, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Leo Dan Olivera-Hernandez appeals following his conviction and sentence for illegal reentry into the United States under 8 U.S.C. § 1326(a), arguing for the first time on appeal that the 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. Even though Olivera-Hernandez takes no position on the motion for summary affirmance,

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

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he acknowledges that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

The parties are correct that Olivera-Hernandez's argument is foreclosed by circuit precedent. *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 Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time is DENIED, and the judgment of the district court is AFFIRMED.