United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 29, 2026
Thomas B. Plunkett, III
Clerk

No. 26-50279
CONSOLIDATED WITH
No. 26-50283
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GILBERTO MENDOZA-YERBAFRIA,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:25-CR-227-1, 4:22-CR-218-1

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

PER CURIAM:[*]

Gilberto Mendoza-Yerbafria appeals following his conviction and sentence for illegal reentry into the United States, as well as his revocation of his term of supervised release in a previous case. Regarding his new conviction, he argues that the enhancement in 8 U.S.C. § 1326(b) is

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

unconstitutional. He does not challenge his revocation judgment. Mendoza-Yerbafria acknowledges that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). The Government has moved for summary affirmance, or alternatively, for an extension of time in which to file a brief.

The parties are correct that Mendoza-Yerbafria's 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 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.