

United States Court of Appeals for the Fifth Circuit

No. 26-50316
CONSOLIDATED WITH
No. 26-50317
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2026

Thomas B. Plunkett, III
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GERMAN NAHUN ANDINO-ORTEGA,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 2:25-CR-85-1, 2:21-CR-781-1

Before SMITH, SOUTHWICK, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

German Andino-Ortega appeals following his conviction and sentence for illegal reentry into the United States, as well as the revocation of his term of supervised release in a previous case. Regarding his new conviction, he contends, for the first time on appeal, that the enhancement in 8 U.S.C.

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

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§ 1326(b) is unconstitutional. He does not raise any challenge to the revocation judgment.

The government moves for summary affirmance or alternatively, for an extension of time in which to file a brief. Even though Andino-Ortega takes no position on the motion for summary affirmance, he acknowledges that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

The parties are correct that Andino-Ortega'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 motion for summary affirmance is GRANTED, its alternative motion for an extension of time is DENIED, and the judgment is AFFIRMED.