No. ______________

In the

Supreme Court of the United States

Teodoro Chavez-Fernandez,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

"[F]act[s] that increase[] the penalty for a crime beyond the prescribed statutory maximum"—that is, all facts except for prior convictions—"must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466, 488–90 & n.15 (2000). *Apprendi* grounded the rule in history and tradition but relied on precedent—*Almendarez-Torres v. United States*—for the exception. *See id.* at 477–83, 487–90 (citing *Almendarez-Torres v. United States*, 523 U.S. 224 (1998)).

Can *Almendarez-Torres* be reconciled with the Sixth Amendment's history and tradition; and if not, should this Court overrule it?

PARTIES TO THE PROCEEDING

Petitioner is Teodoro Chavez-Fernandez, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below. No party is a corporation.

RELATED PROCEEDINGS

- *United States v. Chavez-Fernandez*, No. 4:25-cr-00031-O, U.S. District Court for the Northern District of Texas. Judgment entered on Sept. 8, 2025.

- *United States v. Chavez-Fernandez*, No. 25-11036, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on Apr. 16, 2026.

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PETITION FOR A WRIT OF CERTIORARI

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OPINIONS BELOW

The Fifth Circuit's unpublished opinion is available at *United States v. Chavez-Fernandez*, No. 25-11036, 2026 WL 1031211 (5th Cir. Apr. 16, 2026). It is reprinted at Pet. App'x a001–a002. The district court's judgment and sentence in *United States v. Chavez-Fernandez*, No. 4:25-cr-00031-O (N.D. Tex. Sept. 8, 2025), is reprinted at Pet. App'x a003–a006.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on Apr. 16, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

U.S. Const. amend. VI. (in pertinent part):

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

8 U.S.C. § 1326(a)–(b):

> **(a) In general.**
>
> Subject to subsection (b), any alien who—
>
> (1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of

exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this or any prior Act, shall be fined under title 18, United States Code, or imprisoned not more than 2 years or both.

(b) Criminal penalties for reentry of certain removed aliens.

Notwithstanding subsection (a), in the case of any alien described in such subsection—

(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

(3) who has been excluded from the United States pursuant to section 235(c) [8 U.S.C. § 1225(c)] because the alien was excludable under section 212(a)(3)(B) [8 U.S.C. § 1182(a)(3)(B)] or who has been removed from the United States pursuant to the provisions of title V [8 U.S.C. § 1531 et seq.], and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.[] or

> (4) who was removed from the United States pursuant to section 241(a)(4)(B) [8 U.S.C. § 1231(a)(4)(B)] who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.
>
> For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

STATEMENT OF THE CASE

Petitioner Teodoro Chavez-Fernandez pleaded guilty to illegally reentering the United States following deportation. ROA.28-29.[1] The statute defining this offense—8 U.S.C. § 1326(a)—authorizes a maximum of two years' imprisonment. Enhanced penalties apply, however, for certain recidivists. *See* 8 U.S.C. § 1326(b).

Chavez-Fernandez's indictment did not allege the commission of a prior felony, and he did not admit one as part of his guilty plea. ROA.8, 28-29. Nevertheless, the district court found that Chavez-Fernandez had been so convicted. ROA.143, ECF No. 23-1 [sealed], Presentence Investigation Report (PSR) ¶¶ 35–39. This finding triggered the statutorily enhanced penalty for recidivists in 8 U.S.C. § 1326(b)(1). Pet. App'x a003. The court thus sentenced Chavez-Fernandez as if he had been convicted of 8 U.S.C. § 1326(b)(1), instead of 8 U.S.C. § 1326(a). *See* PSR ¶¶ 69–70, 73. It imposed 27 months' imprisonment and a three-year term of supervised release. Pet. App'x a004.

[1] "ROA" refers to the record on appeal.

On appeal, Chavez-Fernandez sought vacatur of the sentence because neither the indictment nor the plea contained or admitted the prior felony required for an 8 U.S.C. § 1326(b)(1) conviction.[2] Even so, Chavez-Fernandez acknowledged that precedent foreclosed relief. The Fifth Circuit affirmed the sentence, citing to *Almendarez-Torres v. United States*, 523 U.S. 224, 226 (1998). Pet. App'x a002.

REASONS FOR GRANTING THIS PETITION

Almendarez-Torres v. United States, 523 U.S. 224 (1998), was wrongly decided, and this Court should overrule it.

I. *Almendarez-Torres* is an anomaly, and subsequent decisions have undercut its reasoning.

In 1995, Hugo Roman Almendarez-Torres pleaded guilty to violating 8 U.S.C. § 1326. *Almendarez-Torres*, 523 U.S. at 227. At his guilty plea hearing, Almendarez-Torres admitted he had previously been deported "pursuant to three earlier convictions for aggravated felonies." *Id*. (cleaned up). But at sentencing, he argued that "an indictment must set forth all the elements of a crime." *Id.* (citing *Hamling v. United States*, 418 U.S. 87, 117 (1974)). And because his indictment "had not mentioned his earlier aggravated felony convictions," Almendarez-Torres argued that "the court could not sentence him to more than two years imprisonment, the maximum authorized for an offender without an earlier conviction." *Id.* The district court disagreed and sentenced him to 85 months' imprisonment. *Id.*

[2] He also challenged the adequacy of the court's explanation of sentence, an issue on which he does not seek certiorari review.

A five-justice majority of the Supreme Court affirmed. *Id.* at 248. "An "indictment must set forth each element of the crime that it charges," the Court held, but it "need not set forth factors relevant only to the sentencing of an offender found guilty of the charged crime." *Id.* at 228.

A. ***Almendarez-Torres*** **relied on precedent and congressional intent.**

McMillan v. Pennsylvania, 477 U.S. 79 (1986), distinguished an "element[] of the offense"—which "must be proved beyond a reasonable doubt"—from "a sentencing factor that comes into play only after" a finding of guilt. *McMillan*, 477 U.S. at 85–86. Citing *McMillan*, the *Almendarez-Torres* majority explained that "[w]ithin limits," "the question of which factors are which is normally a matter for Congress." 523 U.S. at 228 (citing *McMillan*, 477 U.S. at 84–91). The majority thus looked "to the statute" to answer whether "Congress intended" the predicate convictions set forth in 8 U.S.C. § 1326(b) to function as elements or sentencing factors. *Id.* at 228–35. The five-justice majority concluded that "Congress intended to set forth a sentencing factor in subsection (b)(2) and not a separate criminal offense." *Id.* at 235.

The majority was unpersuaded that the constitutional avoidance canon dictated a contrary interpretation. *Id.* at 235–37. "[W]e, unlike the dissent, do not gravely doubt" "that Congress may authorize courts to impose longer sentences upon recidivists who commit a particular crime." *Id.* at 238–39. In reaching that conclusion, the majority made short shrift of the historical "tradition" that Almendarez-Torres highlighted "of courts having treated recidivism as an element of the related crime." *Id.* at 246 (citing *Massey v. United States*, 281 F. 292, 297–98 (8th Cir. 1922); *Singer* *v. United States*, 278 F. 415, 420 (3d Cir. 1922); *People v. Sickles*, 51 N.E. 288, 289 (N.Y. 1898)). *See also Apprendi v. New Jersey*, 530 U.S. 466, 490 n.15 (quoting *United States v. Reese*, 92 U.S. 214, 232–33 (1875)) (*Almendarez-Torres*'s "extensive discussion of the term 'sentencing factor' virtually ignored the pedigree of the pleading requirement at issue," which maintains that "'[t]he indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted'" and "'pervades the entire system of the adjudged law of criminal procedure….'").

In dissent, Justice Scalia and three other justices noted that "many State Supreme Courts have concluded that a prior conviction which increases maximum punishment must be treated as an element of the offense under either their State Constitutions, or as a matter of common law." *Almendarez-Torres*, 523 U.S. at 256–57 (citations omitted). This, in combination with precedent that decided issues at the margins of whether judges may constitutionally enhance statutory maximums based on recidivism findings, led the dissent to avoid "the difficult constitutional issue in this case" by reading "subsection (b)(2)" as establishing "a separate offense that includes the violation described in subsection (a) but adds the additional element of prior felony conviction." *Id.* at 249.

B. *Apprendi* relied on historical practice and reached the opposite result.

Two years later, *Apprendi* held that the Sixth Amendment required the government to prove facts that increase the maximum sentence to the jury beyond a reasonable doubt. 530 U.S. at 490. "[T]he historical foundation" for the Sixth Amendment's guarantees to the accused "extends down centuries into the common law." *Id.*

at 477. And although *Apprendi* did not squarely address "a constitutional claim based on the omission of any reference to sentence enhancement...in the indictment," *id.* at 477 n.3, *Apprendi*'s venture into history nonetheless touched on historical indictment practices, *see id.* 478–83. "Any possible distinction between an 'element' of a felony offense and a 'sentencing factor' was unknown to the practice of **criminal indictment**, trial by jury, and judgment by court as it existed during the years surrounding our Nation's founding." *Id.* at 478 (emphasis added).

> As a general rule, criminal proceedings were submitted to a jury after being initiated by an indictment containing "all the facts and circumstances which constitute the offence, ... stated with such certainty and precision, that the defendant ... may be enabled to determine the species of offence they constitute, in order that he may prepare his defence accordingly ... and *that there may be no doubt as to the judgment which should be given*, if the defendant be convicted." J. Archbold, Pleading and Evidence in Criminal Cases 44 (15th ed. 1862) (emphasis added). The defendant's ability to predict with certainty the judgment from the face of the felony indictment flowed from the invariable linkage of punishment with crime. See 4 Blackstone 369-370 (after verdict, and barring a defect in the indictment, pardon, or benefit of clergy, "the court *must pronounce that judgment, which the law hath annexed to the crime* " (emphasis added)).

Id. at 478–79. "This practice at common law" also "held true when indictments were issued pursuant to statute." *Id.* at 480. In short, the "historic link between verdict and judgment and the consistent limitation on judges' discretion to operate within the limits of the legal penalties provided," *id.* at 482, led the *Apprendi* majority to interpret the Sixth Amendment as requiring "any fact that increases the penalty for a crime beyond the prescribed statutory maximum [to] be submitted to a jury, and proved beyond a reasonable doubt," *id.* at 490.

Apprendi endorsed a single exception: "the fact of a prior conviction." *Id.* Albeit "a logical application of" *Apprendi*'s "reasoning…should apply if the recidivist issue were contested," the parties did not challenge *Almendarez-Torres*. *Id.* So while acknowledging that *Almendarez-Torres* "represents at best an exceptional departure from the historic practice" and was "arguabl[y]… incorrectly decided," the *Apprendi* majority "need[ed] not revisit it[.]" *Id.* at 487, 489–90.

Justice Thomas, who sided with the majority in both opinions, wrote separately in *Apprendi* to concede that there were "errors" in *Almendarez-Torres* "to which [he] succumbed." 530 U.S. at 520 (Thomas, J., concurring). The "tradition of treating recidivism as an element," he explained, "stretches back to the earliest years of the Republic." *Id.* at 506–07. Drawing from Nineteenth Century state court decisions, Justice Thomas discerned a historic legal principle "that when a statute increases punishment for some core crime based on the fact of a prior conviction, the core crime and the fact of the prior crime together create a new, aggravated crime." *Id.* at 507–08. "The consequences" of this evidence on an *Apprendi* exception rooted in *Almendarez-Torres*, Justice Thomas concluded, "should be plain enough." *Id.* at 518.

C. *Apprendi*'s rule is now entrenched, and *Almendarez-Torres*'s foundations have been discarded.

Since *Apprendi*, this Court has repeatedly applied its rule or methodology to other statutory schemes challenged on constitutional grounds. *See generally Ring v. Arizona*, 536 U.S. 584 (2002); *Blakely v. Washington*, 542 U.S. 296, 299–300 (2004); *United States v. Booker*, 543 U.S. 220 (2005); *Cunningham v. California*, 549 U.S. 270

(2007); *Oregon v. Ice*, 555 U.S. 160, 168 (2009); *Southern Union Co. v. United States*, 567 U.S. 343 (2012).

Alleyne v. United States, 570 U.S. 99 (2013), then overruled *McMillan*, extending *Apprendi*'s rule to mandatory minimums. *See Alleyne*, 570 U.S. at 115–16. In so doing, *Alleyne* repeatedly noted the historic "intimate connection" between "facts" and "particular sentence ranges." *Id.* at 109; *see also id.* ("If a fact was by law essential to the penalty, it was an element of the offense."); *id.* ("crime" was historically defined as "the whole of the wrong to which the law affixes ... punishment" (internal quotes omitted)); *id.* at 111 (internal quotes omitted) ("the indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted"). *Alleyne* recognized the tension with *Almendarez-Torres*, but it explained the prior conviction exception away as a "narrow" one. *Id.* at 111 n.1. And as in *Apprendi*, there was no reason to revisit that "narrow exception" because the parties did not challenge it. *Id.*

II. This Court should overrule *Almendarez-Torres*.

Almendarez-Torres's prior-conviction exception sharply departs from Founding Era history and tradition. Further, *Almendarez-Torres* erases core constitutional guarantees, is an outlier in this Court's Sixth Amendment jurisprudence, and lacks reliance interests that could otherwise justify its retention.

A. *Almendarez-Torres* cannot be squared with historical practice.

The pre-Founding Era English authority and earliest American authority reveal a consistent practice of treating a prior conviction necessary to support a statutorily enhanced sentence as an element to be set forth in the indictment and proven at trial. For instance, a 1751 prosecution resulted in an acquittal after the prosecutor failed to prove the fact of the prior conviction. Trial of Elizabeth Strong, (Oct. 16, 1751), Old Bailey Proceedings Online, https://www.oldbaileyonline.org/browse.jsp?id=t17511016-48-defend352&div=t17511016-48#highlight (last visited July 13, 2026). In a 1788 prosecution, the prior conviction was alleged in the indictment, one witness was called to prove up "the record of the prisoner's former conviction," and another witness called to establish identity. Trial of Samuel Dring, (Sept. 10, 1788), Old Bailey Proceedings Online, https://www.oldbaileyonline.org/browse.jsp?id=t17880910-129-defend1003&div=t17880910-129#highlight (last visited July 13, 2026). In Michael Michael's 1802 prosecution, the indictment also alleged the date and jurisdiction of the prior conviction, at which Mr. Michael "was tried and convicted of being a common utterer." Trial of Michael Michael, (Feb. 17, 1802), Old Bailey Proceedings Online, https://www.oldbaileyonline.org/browse.jsp?id=t18020217-89&div=t18020217-89&terms=common%20utterer#highlight (last visited July 13, 2026). The prosecutor then began the trial by reading into the record the prior conviction, and the government called two witnesses to establish Mr. Michael's identity as the same man named in the earlier judgment. *Id.*

Founding Era prosecutions evidence the same practice. A 1785 indictment charged James Randall with an initial commitment "for being a rogue or vagabond" and a subsequent arrest "with a pistol and iron crow." Trial of James Randall, (Sept.

14, 1785), Old Bailey Proceedings Online, https://www.oldbaileyonline.org/browse.jsp?id=t17850914-104&div=t17850914-104&terms=incorrigible%20rogue#highlight (last visited July 13, 2026). On those facts, the indictment alleged, he "was adjudged to be an incorrigible rogue," but following his commitment to "to the house of corrections for two years," Mr. Randall escaped. *Id.* The prosecution once more began by producing "true copies" of the "record" establishing the prior conviction. *Id.* From there, a witness identified Mr. Randall as the man named in the record of conviction and testified to his escape. *Id.* Another witness testified to apprehending Mr. Randall following his first escape and attending the trial at which he earned the title incorrigible rogue. *Id.* Trial records from 1797 and 1814 establish the same practice for other defendants. Trial of Joseph Powell, (Nov. 30, 1814), Old Bailey Proceedings Online, https://www.oldbaileyonline.org/browse.jsp?id=t18141130-110&div=t18141130-110&terms=offend%20again#highlight (last visited July 13, 2026); Trial of John Hughes, (July 12, 1797), Old Bailey Proceedings Online, https://www.oldbaileyonline.org/browse.jsp?id=t17970712-64&div=t17970712-64&terms=offend%20again#highlight (last visited July 13, 2026).

Founding Era prosecutors, defendants, and courts in the United States also routinely treated the fact of a prior conviction necessary to support an enhanced sentence as an element of an aggravated crime to be charged in the indictment and proven at trial to a jury. In *People v. Youngs*, 1 Cai. 37 (N.Y. Sup. Ct. 1803), the Supreme Court of New York considered a grand-larceny statute passed in 1801 and held that the enhanced punishment for recidivists could not be imposed without the prior-conviction allegation in the indictment. *Id.* at 37. "It is necessary that the previous offence should be made a substantive charge in the indictment for a second, where the punishment is augmented by the repetition, because the repetition is the crime." *Id.* at 41. "The time at which the second offence was committed is of the essence of the crime," and "if it be a question, then, whether the second offence was committed after the first conviction, it is a fact not inquirable here, but by a jury." *Id.* at 41. Thus, "where the first offence forms an ingredient in the second, and becomes a part of it, such first offence is invariably set forth in the indictment for the second." *Id.* at 42. In short, "the nature of the crime is changed by a superadded fact[.]" *Id.* Opinions from elsewhere in the United States establish the same conception of the prior conviction changing the nature of the crime when an enhanced penalty for recidivism was sought. *See State v. David*, 1 Del. Cas 252, 1800 WL 216, at *1 (Apr. 1, 1800) ("Pillory was not inflicted, it not being laid as a second offense."); *State v. Allen*, 10 N.C. 614, 616 (1825) ("If the slave is charged with the second offence so as to incur the punishment of death under the act, it ought to be so stated in the indictment, that it might appear on the face of the record that the court had jurisdiction.").

B. ***Stare decisis* does not justify adhering to *Almendarez-Torres.***

"The force of stare decisis is at its nadir in cases concerning procedural rules that implicate fundamental constitutional protections." *Alleyne*, 570 U.S. at 116 n.5. "[T]he force of stare decisis is [also] reduced" "when procedural rules are at issue that do not govern primary conduct and do not implicate the reliance interests of private parties." *Id.* at 119 (Sotomayor, J., concurring). "[P]rosecutors are perfectly able to charge facts upon which a mandatory minimum sentence is based in the indictment and prove them to a jury," so "any reliance interest that the Federal Government and state governments might have is particularly minimal here"—after all, prosecutors can charge prior convictions in indictments and prove them up at trial just as easily. *Id.* In a context "where the reliance interests are so minimal, and the reliance interests of private parties are nonexistent, *stare decisis* cannot excuse a refusal to bring coherence and consistency to our Sixth Amendment law." *Id.* at 121 (cleaned up). *See also Ramos v. Louisiana*, 590 U.S. 83, 129 (2020) (Kavanaugh, J., concurring in part) ("a separate non-retroactivity doctrine," under which "new constitutional rules apply on direct review, but generally do not apply retroactively on habeas corpus review," also "mitigate[s] the disruptive effects of overrulings in criminal cases.").

Simply put, *Almendarez-Torres*'s "exception to trial by jury for establishing 'the fact of a prior conviction' finds its basis not in the Constitution…" *Rangel-Reyes v. United States*, 547 U.S. 1200 (2006) (Thomas, J., dissenting from the denial of certiorari). And this Court is "the *only* court authorized" "to resolve" the anomaly of *Almendarez-Torres* and align the fact of prior conviction with the rest of its Sixth Amendment jurisprudence. *Id.* (Thomas, J., dissenting from the denial of certiorari). *Cf. Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 886 (2018) (overruling precedent where "[f]undamental" constitutional protections were "at stake"; the precedent was "poorly reasoned," "inconsistent" with the rest of the Court's jurisprudence and undermined by more recent decisions"; and "no reliance interests" "justify the perpetuation of the" constitutional "violations"). Currently, "countless criminal defendants" are being denied "the full protection afforded by the

Fifth and Sixth Amendments….” *Rangel-Reyes*, 547 U.S. at 1200 (Thomas, J., dissenting from the denial of certiorari). “[S]anction[ing] the conviction at trial or by guilty plea of…defendants…not…convicted under the proper constitutional rule” also “has traditionally supplied…support for overruling an egregiously wrong criminal-procedure precedent.” *Ramos*, 590 U.S. at 126 (Kavanaugh, J., concurring in part) (citing *Malloy v. Hogan*, 378 U.S. 1 (1964)).

CONCLUSION

Petitioner Teodoro Chavez-Fernandez submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 15th day of July, 2026.

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

No. 25-11036
Summary Calendar

United States of America,

Plaintiff—Appellee,

versus

Teodoro Chavez-Fernandez,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:25-CR-31-1

Before Stewart, Graves, and Oldham, *Circuit Judges*.

Per Curiam:*

Teodoro Chavez-Fernandez appeals the 27-month prison term imposed for his conviction for illegally reentering the United States. He argues that the district court was obligated, under *Rita v. United States*, 551 U.S. 338 (2007), to address his nonfrivolous arguments for a downward variance. Reviewing this forfeited argument for plain error, we conclude,

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

based on the record, that there was no error, plain or otherwise. *See Rita*, 551 U.S. at 343-45, 356, 358-59; *United States v. Coto-Mendoza*, 986 F.3d 583, 584, 586-87 & nn.3-6 (5th Cir. 2021).

In addition, Chavez-Fernandez argues that the district court erred by imposing a sentence above the two-year statutory maximum in 8 U.S.C. § 1326(a). He correctly concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226 (1998). *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)).

Although Chavez-Fernandez's appeal can be resolved without further briefing, summary affirmance is not appropriate as to the first issue. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969); *United States v. Bailey*, 924 F.3d 1289, 1290 (5th Cir. 2019). The Government's motion for summary affirmance is DENIED. The alternative motion for an extension of time to file a brief on the merits is DENIED. The judgment of the district court is AFFIRMED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

v.

TEODORO CHAVEZ-FERNANDEZ

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:25-CR-00031-O(01)
U.S. Marshal's No.: 74461-511
Justin C Beck, Assistant U.S. Attorney
Pia R Lederman, Attorney for the Defendant

On May 7, 2025 the defendant, TEODORO CHAVEZ-FERNANDEZ, entered a plea of guilty as to Count One of the Indictment filed on February 5, 2025. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

Title & Section	**Nature of Offense**	**Offense Ended**	**Count**
8 U.S.C. § 1326(a) and (b)(l)	Illegal Reentry After Deportation	09/08/2024	One

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of $100.00 as to Count One of the Indictment filed on February 5, 2025.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed September 5, 2025.

Reed O'Connor

REED O'CONNOR
CHIEF U.S. DISTRICT JUDGE

Signed September 8, 2025.

IMPRISONMENT

The defendant, TEODORO CHAVEZ-FERNANDEZ, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **TWENTY-SEVEN (27) MONTHS** as to Count One of the Indictment filed on February 5, 2025. This sentence shall run consecutively to any future sentence which may be imposed in Case No. CR24-1099, before the 415th District Court, Parker County, Texas; as well as Case No. CCL1-24-0798, before the Parker County Court at Law No. 1.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) YEARS** as to Count One of the Indictment filed on February 5, 2025.

As a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 USC § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions contained in the Judgment and shall comply with the mandatory and special conditions stated herein.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

(1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
(2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
(3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
(4) You must answer truthfully the questions asked by your probation officer.
(5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

(6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

(7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

(8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

(9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

(10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

(11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

(12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

(13) You must follow the instructions of the probation officer related to the conditions of supervision.

In addition the defendant shall:

not commit another federal, state, or local crime;

not illegally possess controlled substances;

cooperate in the collection of DNA as directed by the probation officer;

not possess a firearm, ammunition, destructive device, or any dangerous weapon;

refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court;

pay the assessment imposed in accordance with 18 U.S.C. § 3013;

not illegally reenter the United States if deported or allowed voluntary departure;

abstain from the use of alcohol and all other intoxicants during the term of supervision; and,

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least $25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

RETURN

I have executed this judgment as follows:

____

____

____

Defendant delivered on ____________________ to ______________________________

at ____, with a certified copy of this judgment.

____
United States Marshal

BY ___________________________
Deputy Marshal