

TABLE OF APPENDICES

APPENDIX A	A1
------------------	----

United States v. Varela-Avila,
No. 26-50065
(5th Cir. July 15, 2026) (unpublished order)

APPENDIX B	B1–4
------------------	------

United States v. Varela-Avila,
No. 26-50065
(5th Cir. July 1, 2026) (government motion)

APPENDIX C	C1
------------------	----

United States v. Varela-Avila,
Indictment,
No. 2:25-cr-00908-1
(W.D. Tex. Apr. 16, 2026)

APPENDIX D	D1–2
------------------	------

8 U.S.C. § 1326

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 26-50065

United States Court of Appeals
Fifth Circuit

FILED

July 15, 2026

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

UNITED STATES OF AMERICA,

versus

CARLOS ALEJANDRO VARELA-AVILA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:25-CR-908-1

UNPUBLISHED ORDER

Before STEWART, RICHMAN, and HAYNES, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that Appellee's opposed motion for summary affirmance is GRANTED.

IT IS FURTHER ORDERED that Appellee's motion for an extension of time to file brief is DENIED as moot.

APPENDIX B

No. 26-50065

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States of America,
Plaintiff-Appellee,

v.

Carlos Alejandro Varela-Avila,
Defendant-Appellant.

On Appeal from the United States District Court
for the Western District of Texas

Appellee's Motion for Summary Affirmance or to Extend Time to File Appellee's Brief

The government moves to summarily affirm the judgment of the district court. As Defendant-Appellant concedes, the sole issue on appeal—a challenge to a recidivism enhancement in 8 U.S.C. § 1326(b)—is foreclosed by binding precedent. If this Court instead orders further briefing, the government requests 21 days from that order to file an appellee's brief.

1. Section 1326(a) provides for a maximum of two years' imprisonment and one year of supervised release. 8 U.S.C. § 1326(a); 18 U.S.C. §§ 3559(a)(5), 3583(b)(3). Section 1326(b) raises this maximum if the defendant was removed after certain convictions. 8 U.S.C. § 1326(b); 18 U.S.C. § 3583. As Defendant-Appellant concedes, the Supreme Court has held that the prior convictions that justify these enhanced penalties may be found by a court and need

not be found by a jury or admitted by a defendant. *See Almendarez-Torres v. United States*, 523 U.S. 224, 239-47 (1998).

2. “Summary affirmance is appropriate if ‘the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.’” *United States v. Arambula*, 950 F.3d 909, 909 (5th Cir. 2020) (quoting *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969)). There is no substantial question as to the outcome of this case because the Defendant-Appellant concedes that the only argument on appeal—that the enhanced penalties in § 1326(b) must be found by a jury or admitted by a defendant—is foreclosed by *Almendarez-Torres*. Therefore, the district court’s judgment should be summarily affirmed.

3. Summary affirmance would be the most appropriate and efficient disposition. But if this Court instead orders further briefing, the government respectfully requests 21 days from that order to allow time to draft and file an appellee’s brief.

Certificate of Conference

The U.S. Attorney’s Office conferred with counsel for Defendant-Appellant, who declined to take a position on summary affirmance and has no objection to the alternative request for an extension.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Angela S. Raba
Angela S. Raba
Assistant United States Attorney

Certificate of Service

I certify that on July 1, 2026, I filed this motion through this Court's electronic case-filing system, which will serve it on all registered counsel.

/s/ Angela S. Raba
Angela S. Raba
Assistant United States Attorney

* * *

Certificate of Compliance

I certify that

(1) this document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 313 words; and

(2) this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in Calisto MT font, size 14.

/s/ Angela S. Raba
Angela S. Raba
Assistant United States Attorney

Dated: July 1, 2026

APPENDIX C

FILED

April 16, 2025

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 DEL RIO DIVISION

CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 By: CR Deputy

DR:25-CR-00908-EG

UNITED STATES OF AMERICA

Cause No.:

v.

INDICTMENTCARLOS ALEJANDRO VARELA-
AVILA,

[Vio: 8 U.S.C. § 1326(a) & (b)(1)/(2):
 Illegal Re-entry into the United States.]

THE GRAND JURY CHARGES:

COUNT ONE

[8 U.S.C. § 1326(a) & (b)(1)/(2)]

That on or about March 19, 2025, in the Western District of Texas, Defendant,

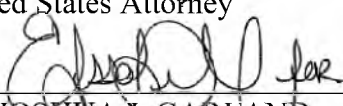
CARLOS ALEJANDRO VARELA-AVILA,

an alien, attempted to enter, entered, and was found in the United States having previously been denied admission, excluded, deported and removed from the United States on or about April 16, 2024, and that Defendant had not received the consent of the Attorney General of the United States and the Secretary of the Department of Homeland Security, to reapply for admission to the United States, in violation of Title 8, United States Code, Section 1326(a) & (b)(1)/(2).

A TRUE BILL.

FOREPERSON

MARGARET F. LEACHMAN
 United States Attorney

By: 

JOSHUA J. GARLAND

Assistant United States Attorney

APPENDIX D

United States Code Annotated
Title 8. Aliens and Nationality (Refs & Annos)
Chapter 12. Immigration and Nationality (Refs & Annos)
Subchapter II. Immigration
Part VIII. General Penalty Provisions

8 U.S.C.A. § 1326

§ 1326. Reentry of removed aliens

Effective: September 30, 1996

[Currentness](#)

(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 chapter or any prior Act,

shall be fined under Title 18, 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, 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 1225\(c\)](#) of this title because the alien was excludable under [section 1182\(a\)\(3\)\(B\)](#) of this title or who has been removed from the United States pursuant to the provisions of subchapter V, 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 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.¹ or

(4) who was removed from the United States pursuant to [section 1231\(a\)\(4\)\(B\)](#) of this title 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, 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.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to [section 1252\(h\)\(2\)](#)² of this title who 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 incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that--

- (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;
- (2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
- (3) the entry of the order was fundamentally unfair.

CREDIT(S)

(June 27, 1952, c. 477, Title II, ch. 8, § 276, 66 Stat. 229; [Pub.L. 100-690, Title VII, § 7345\(a\)](#), Nov. 18, 1988, 102 Stat. 4471; [Pub.L. 101-649, Title V, § 543\(b\)\(3\)](#), Nov. 29, 1990, 104 Stat. 5059; [Pub.L. 103-322, Title XIII, § 130001\(b\)](#), Sept. 13, 1994, 108 Stat. 2023; [Pub.L. 104-132, Title IV, §§ 401\(c\)](#), 438(b), 441(a), Apr. 24, 1996, 110 Stat. 1267, 1276, 1279; [Pub.L. 104-208, Div. C, Title III, §§ 305\(b\)](#), 308(d)(4)(J), (e)(1)(K), (14)(A), 324(a), (b), Sept. 30, 1996, 110 Stat. 3009-606, 3009-618 to 3009-620, 3009-629.)

[Notes of Decisions \(1512\)](#)