

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 22, 2022

Lyle W. Cayce
Clerk

No. 21-51035
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LUIS ANTONIO MOLINA-RIVAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-453-1

Before DAVIS, JONES, and ELROD, *Circuit Judges.*

PER CURIAM:*

Luis Antonio Molina-Rivas appeals his conviction and sentence for illegal reentry into the United States, in violation of 8 U.S.C. § 1326(a) and (b)(2). For the first time on appeal, Molina-Rivas argues that § 1326(b) is unconstitutional because it allows for a sentence above the otherwise

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He has filed an unopposed motion for summary disposition and a letter brief explaining that he has raised the issue only to preserve it for further review and conceding correctly that it is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Molina-Rivas's motion is GRANTED, and the judgment of the district court is AFFIRMED.