

United States Court of Appeals for the Fifth Circuit

No. 22-50349
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 6, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANTONIO AVILA-OLIVARES,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-1015-1

Before DAVIS, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Antonio Avila-Olivares appeals his conviction and sentence for illegal reentry in violation of 8 U.S.C. § 1326(a) and (b)(2), contending that the enhancement of his sentence pursuant to § 1326(b) is unconstitutional because the fact of a prior conviction was not charged and proved beyond a reasonable doubt. He has filed an unopposed motion for summary disposition and a letter brief explaining that he raises this issue only to

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

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preserve it for further review and correctly conceding it to be 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), Avila-Olivares's motion is GRANTED, and the judgment of the district court is AFFIRMED.