

United States Court of Appeals  
for the Fifth Circuit

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No. 22-50369  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 16, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

GEOVANNI GONZALEZ-SOLANO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:21-CR-1035-1

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Before KING, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:\*

Geovanni Gonzalez-Solano appeals his conviction and sentence for illegal reentry after removal under 8 U.S.C. §§ 1326(a) and (b)(1). For the first time on appeal, Gonzalez-Solano argues that § 1326(b) is unconstitutional because it permits a defendant to be sentenced above the statutory maximum under § 1326(a) based on the fact of a prior conviction that was not alleged in the indictment or found by a jury beyond a reasonable

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

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doubt. He has filed an unopposed motion for summary disposition and a letter brief correctly conceding that this issue 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). Gonzalez-Solano states that he has raised the issue only to preserve it for possible further review. Because summary disposition is appropriate under these circumstances, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Gonzalez-Solano’s motion is GRANTED, and the district court’s judgment is AFFIRMED.