

# United States Court of Appeals for the Fifth Circuit

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No. 24-50177  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
September 27, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

MARTIN DIAZ-NUNEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:23-CR-2198-1

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Before JONES, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:\*

Martin Diaz-Nunez appeals the sentence imposed following his guilty plea conviction for illegal reentry after removal in violation of 8 U.S.C. § 1326. For the first time on appeal, Diaz-Nunez challenges the application of the enhanced penalty range in § 1326(b) as unconstitutional because it permits a defendant to be sentenced above the statutory maximum of

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

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§ 1326(a) based on the fact of a prior conviction that was 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 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). He raises the issue to preserve it for Supreme Court review.

Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Diaz-Nunez's motion is GRANTED, and the district court's judgment is AFFIRMED.