

# United States Court of Appeals for the Fifth Circuit

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No. 22-50374  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 24, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

NICASIO NEVAREZ-ZAMUDIO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:21-CR-1067-1

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

PER CURIAM:\*

Nicasio Nevarez-Zamudio 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 under § 1326(b) is unconstitutional. He has filed an unopposed motion for summary disposition and a letter brief explaining that he raises this issue only to preserve it for further review, correctly conceding it to be foreclosed by *Almendarez-Torres v. United States*,

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

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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), Nevarez-Zamudio’s motion is GRANTED, and the judgment of the district court is AFFIRMED.