

United States Court of Appeals  
for the Fifth Circuit

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No. 22-50859  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

March 31, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ELMER ALEXANDER MARTINEZ-AMAYA,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:22-CR-262-1

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

PER CURIAM:\*

Elmer Alexander Martinez-Amaya appeals his conviction and sentence for illegal reentry after removal in violation of 8 U.S.C. § 1326(a) and (b)(1). In his sole issue on appeal, Martinez-Amaya contends that § 1326(b) is unconstitutional because it permits a sentence above the

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

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otherwise-applicable statutory maximum based on facts that were 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 this issue only to preserve it for further review and 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). Because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Martinez-Amaya's motion is GRANTED, and the district court's judgment is AFFIRMED.