

# United States Court of Appeals for the Fifth Circuit

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No. 23-50788  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

April 4, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

LUIS ALFREDO NANEZ-LOPEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:23-CR-199-1

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

PER CURIAM:\*

Luis Alfredo Nanez-Lopez appeals the sentence imposed following his guilty plea conviction for illegal reentry after deportation in violation of 8 U.S.C. § 1326. For the first time on appeal, Nanez-Lopez 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

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

No. 23-50788

of § 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 doubt. As he correctly concedes, 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. He has also filed an unopposed motion for summary affirmance further conceding that the issue is foreclosed.

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