

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 8, 2022

Lyle W. Cayce
Clerk

No. 21-51073
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RODOLFO OLIVA-SANTOS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-427-1

Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Rodolfo Oliva-Santos appeals his conviction and sentence for illegal reentry after removal in violation of 8 U.S.C. § 1326(a) and (b)(2). He contends that the enhancement of his illegal reentry sentence pursuant to § 1326(b) was unconstitutional because the fact of his prior conviction was

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-51073

not charged in his indictment or proved to 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 correctly 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), Oliva-Santos's motion is GRANTED, and the district court's judgment is AFFIRMED.