

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 2, 2022

Lyle W. Cayce
Clerk

No. 21-51082
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELEUTERIO ARSINIEGA-NAVARRETE,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-532-1

Before KING, COSTA, and HO, *Circuit Judges.*

PER CURIAM:*

Eleuterio Arsiniega-Navarrete 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 pursuant to § 1326(b) is unconstitutional because the fact of a prior conviction was not charged and proved beyond a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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reasonable doubt. 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 and correctly conceding that it 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), Arsiniega-Navarrete's motion is GRANTED, and the judgment of the district court is AFFIRMED.