

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit  
**FILED**  
September 29, 2022  
Lyle W. Cayce  
Clerk

---

No. 22-50388  
Summary Calendar

---

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

MARTIN ROBERT MONCADA-AGUIRRE,

*Defendant—Appellant.*

---

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

---

Before JONES, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:\*

Martin Robert Moncada-Aguirre appeals his conviction and sentence for illegal reentry after removal, in violation of 8 U.S.C. § 1326(a) and (b)(1). Moncada-Aguirre contends that § 1326(b) is unconstitutional because it permits a sentence above the otherwise-applicable statutory maximum based

---

\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 22-50388

on facts that were neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He acknowledges 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). He nevertheless seeks to preserve the issue for further review and has filed an unopposed motion for summary disposition. Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Moncada-Aguirre's motion is GRANTED, and the district court's judgment is AFFIRMED.