

# United States Court of Appeals for the Fifth Circuit

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No. 22-50729  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 20, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

TRINIDAD WALTER ENCARNACION-PASCUAL,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:22-CR-142-1

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Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:\*

Trinidad Walter Encarnacion-Pascual 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 sentence pursuant to § 1326(b) was unconstitutional because the fact of his prior conviction, which increased his statutory maximum, was treated as a sentencing factor, rather than as an element of the offense. He has filed an unopposed motion for

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

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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), Encarnacion-Pascual's motion is GRANTED, and the district court's judgment is AFFIRMED.