

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 14, 2022

Lyle W. Cayce
Clerk

No. 21-51140
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MIGUEL ANDRES-TOMAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-627-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Miguel Andres-Tomas appeals his conviction for illegal reentry into the United States and his sentence of 21 months of imprisonment and three years of supervised release. He argues that 8 U.S.C. § 1326(b) is unconstitutional because it permits the increase of a sentence beyond the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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otherwise-applicable statutory maximum based on facts that are neither charged in the indictment nor found by a jury beyond a reasonable doubt. He concedes that this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the issue for future review and has filed an unopposed motion for summary disposition.

As Andres-Tomas concedes, the issue he raises is foreclosed by *Almendarez-Torres*. 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), Andres-Tomas's motion for summary disposition is GRANTED, and the judgment of the district court is AFFIRMED.