

United States Court of Appeals
for the Fifth Circuit

No. 23-40368
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
November 17, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELEUTERIO COVARRUBIAS-MARTINEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:22-CR-1932-1

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Eleuterio Covarrubias-Martinez appeals his conviction and sentence for being found in the United States after a previous deportation. He argues that 8 U.S.C. § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum established by § 1326(a) based

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

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on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt.

Covarrubias-Martinez has filed an unopposed motion for summary disposition and a letter brief correctly conceding that the only issue he raises 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 explains that he has raised the issue to preserve it for possible further review. Accordingly, because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Covarrubias-Martinez's motion is GRANTED, and the district court's judgment is AFFIRMED.