

# United States Court of Appeals for the Fifth Circuit

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No. 23-40368  
Summary Calendar

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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.*

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

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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

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\* 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.