

United States Court of Appeals for the Fifth Circuit

No. 22-50969
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 8, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JUAN LEONARDO APARICIO-MARTINEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CR-466-1

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

PER CURIAM:*

Juan Leonardo Aparicio-Martinez appeals his sentence of 30 months of imprisonment and three years of supervised release imposed following his guilty plea conviction for illegal reentry after removal. He argues that 8 U.S.C. § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum of two years of imprisonment and

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

one year of supervised release based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt.

Aparicio-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), Aparicio-Martinez's motion is GRANTED, and the district court's judgment is AFFIRMED.