

United States Court of Appeals for the Fifth Circuit

No. 22-51040
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 5, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CARLOS ESAU HERNANDEZ-CHAVEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CR-52-1

Before DENNIS, ELROD, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Carlos Esau Hernandez-Chavez appeals his conviction and sentence for illegal reentry after removal, in violation of 8 U.S.C. § 1326(a) and (b)(2). Hernandez-Chavez contends that § 1326(b) is unconstitutional because it permits a sentence above the otherwise-applicable statutory maximum based on facts that were neither alleged in the indictment nor found by a jury

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

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beyond a reasonable doubt. He correctly acknowledges 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). He nevertheless seeks to preserve the issue for further review and has filed an unopposed motion for summary disposition. Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Hernandez-Chavez's motion is GRANTED, and the district court's judgment is AFFIRMED.