

United States Court of Appeals
for the Fifth Circuit

No. 23-10190
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 2, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EMMANUEL GIL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-292-1

Before HAYNES, GRAVES, and HIGGINSON, *Circuit Judges.*

PER CURIAM:*

Emmanuel Gil appeals his sentence of 53 months of imprisonment and three years of supervised release for illegally reentering the United States after removal, in violation of 8 U.S.C. § 1326(a) and (b). He argues that § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable two-year statutory maximum of imprisonment in § 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. He also argues that his three-year term of supervised release is unconstitutional for the same reasons, as it exceeds the one-year maximum that would apply under § 1326(a) and 18 U.S.C. §§ 3559 and 3583. However, he correctly concedes that his arguments are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and he raises them merely to preserve them for further review. *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). The Government has moved, without opposition, for summary affirmance, or in the alternative, for an extension of time to file a brief on the merits.

Because summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's unopposed motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the district court's judgment is AFFIRMED.