

United States Court of Appeals for the Fifth Circuit

No. 23-50344
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
December 13, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BARTOLO DAMASO-SIXTOS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:22-CR-1500-1

Before WIENER, STEWART, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Defendant-Appellant Bartolo Damaso-Sixtos appeals his conviction and sentence under 8 U.S.C. § 1326 for illegal entry into the United States after removal. He argues for the first time on appeal that § 1326(b) is unconstitutional because it permits a sentence above the otherwise-applicable statutory maximum established by § 1326(a) based on facts that

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

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are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. Damaso-Sixtos has filed an unopposed motion for summary disposition. He acknowledges that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the argument for possible Supreme Court review.

This court has held that subsequent Supreme Court decisions such as *Alleyne v. United States*, 570 U.S. 99 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), did not overrule *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019); *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014). Damaso-Sixtos is therefore correct that his argument is foreclosed and that summary disposition is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Damaso-Sixtos's unopposed motion for summary disposition is GRANTED, and the district court's judgment is AFFIRMED.