

United States Court of Appeals
for the Fifth Circuit

No. 23-50817
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 8, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SELVIN DANILO CHOCOOJ-BOTZOC,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:22-CR-957-1

Before ELROD, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

Selvin Danilo Chocooj-Botzoc appeals his sentence for illegal reentry into the United States after having been removed, in violation of 8 U.S.C. § 1326(a) and (b). He contends that § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond

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

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a reasonable doubt. Chocooj-Botzoc moves for summary disposition, correctly conceding that his challenge to § 1326(b) is foreclosed by the Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and explaining that he merely seeks to preserve the issue for further review. *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019).

Because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Chocooj-Botzoc's motion is GRANTED, and the judgment of the district court is AFFIRMED.