

# United States Court of Appeals for the Fifth Circuit

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No. 24-50172  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 26, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

VICTOR MANUEL GANDARA-ORTEGA,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:23-CR-2263-1

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Before DENNIS, WILSON, and RAMIREZ, *Circuit Judges.*

PER CURIAM:\*

Victor Manuel Gandara-Ortega appeals his sentence of 15 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 term of

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

No. 24-50172

imprisonment in § 1326(a) based 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). Gandara-Ortega has moved, without opposition, for summary disposition.

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