

United States Court of Appeals
for the Fifth Circuit

No. 22-50968
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 31, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

OSVALDO CASTELAN-SAUCEDO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CR-457-1

Before SMITH, SOUTHWICK, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Oswaldo Castelan-Saucedo appeals his sentence for illegal reentry under 8 U.S.C. § 1326(a) and (b)(2), maintaining that § 1326(b) is unconstitutional because it permits a sentence above the otherwise-applicable statutory maximum based on facts not charged or proved beyond a reasonable doubt. Castelan-Saucedo has filed an unopposed motion for summary affirmance, conceding that his argument is foreclosed by *Almendarez-Torres*

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

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v. United States, 523 U.S. 224 (1998), and explaining that he seeks only to preserve it for further review.

Because Castelan-Saucedo is correct that his argument is foreclosed, *see United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019), summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the motion is GRANTED, and the judgment is AFFIRMED.