

United States Court of Appeals for the Fifth Circuit

No. 23-50368
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 5, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ARTEMIO AGUILAR-MONTERO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:22-CR-1627-1

Before DAVIS, WILLETT, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Artemio Aguilar-Montero appeals his conviction and sentence for being found in the United States after a previous deportation. He argues that 8 U.S.C. § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum established by § 1326(a) based on

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

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facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt.

Aguilar-Montero has filed an unopposed motion for summary disposition and a letter brief correctly conceding that the only issue he raises is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). He explains that he has raised the issue to preserve it for possible further review. Accordingly, because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Aguilar-Montero's motion is GRANTED, and the district court's judgment is AFFIRMED.