

United States Court of Appeals for the Fifth Circuit

No. 24-50172
Summary Calendar

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.

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

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

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

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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.