

United States Court of Appeals
for the Fifth Circuit

No. 22-50353
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
December 14, 2022
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FRANCISCO JAVIER HERNANDEZ-CUEVAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-1016-1

Before JOLLY, JONES, and HO, *Circuit Judges.*

PER CURIAM:*

Francisco Javier Hernandez-Cuevas appeals his conviction for illegal reentry and his sentence of 16 months of imprisonment and three years of supervised release. He argues for the first time on appeal that 8 U.S.C. § 1326(b) is unconstitutional because it permits the increase of a sentence beyond the otherwise-applicable statutory maximum based on facts that are

* This opinion is not designated for publication. *See* 5TH CIRCUIT RULE 47.5.

No. 22-50353

neither charged in the indictment nor found by a jury beyond a reasonable doubt.

Hernandez-Cuevas has filed an unopposed motion for summary disposition and a letter brief correctly conceding that this issue 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 states that he raises the issue only to preserve it for possible further review. Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Hernandez-Cuevas's motion is GRANTED, and the district court's judgment is AFFIRMED.