

United States Court of Appeals for the Fifth Circuit

No. 22-50806
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 23, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CRISOFORO VELAZQUEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CR-155-1

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

PER CURIAM:*

Crisoforo Velazquez appeals his sentence for illegal reentry under 8 U.S.C. § 1326(a) and (b)(2), arguing 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. He has filed an unopposed motion for summary affirmance, conceding that

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

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his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and explaining that he seeks only to preserve it for further review.

Because Velazquez is correct in conceding 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, his motion is GRANTED, and the judgment of the district court is AFFIRMED.