

United States Court of Appeals for the Fifth Circuit

No. 23-50790
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 7, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BENJAMIN BURCIAGA-HERRERA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:23-CR-276-1

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

PER CURIAM:*

Benjamin Burciaga-Herrera appeals the term of imprisonment imposed following his guilty-plea conviction for illegal reentry after removal. He argues that 8 U.S.C. § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum established by

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

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§ 1326(a) based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt.

Burciaga-Herrera 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), Burciaga-Herrera's motion is GRANTED, and the district court's judgment is AFFIRMED.