

United States Court of Appeals for the Fifth Circuit

No. 22-50905
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 16, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EDIBERTO GOMEZ-IZAZAGA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CR-359-1

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

PER CURIAM:*

Ediberto Gomez-Izazaga appeals his sentence for illegal reentry in violation of 8 U.S.C. § 1326(a) and (b)(2). In his sole issue on appeal, Gomez-Izazaga argues that § 1326(b) is unconstitutional because it permits a sentence above the otherwise-applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a

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

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