

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-11044
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 17, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FELICIANO VILLA-SARIANA, also known as Feliciano Villa,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CR-58-1

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Feliciano Villa-Sariana appeals his conviction and sentence for illegal reentry after removal from the United States. He argues that the 70-month imprisonment term imposed by the district court exceeded the statutory maximum because the enhanced penalty provisions of 8 U.S.C. § 1326(b) are unconstitutional. He also contends that his guilty plea was involuntary and accepted in violation of Federal Rule of Criminal Procedure 11 because he was

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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not admonished that the prior-felony provisions of § 1326(b) stated an essential offense element that the Government was required to prove to a jury beyond a reasonable doubt.

However, Villa-Sariana has filed an unopposed motion for summary disposition and a letter brief conceding that these issues are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and explaining that he has raised the issues only to preserve them for possible further review. Accordingly, because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Villa-Sariana's motion is GRANTED. The district court's judgment is AFFIRMED.