

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

No. 18-10022
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 27, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALBERTO JORGE SILVA-IBARRA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-348-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Alberto Jorge Silva-Ibarra appeals the 30-month sentence imposed following his guilty plea conviction for illegal reentry after removal. He argues that his sentence exceeds the correct statutory maximum sentence of two years under 8 U.S.C. § 1326(a) because the statutory enhancement scheme in § 1326(b) is unconstitutional, and his guilty plea is involuntary and was 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 fact of a prior conviction is an essential element of the offense that the Government must prove to a jury beyond a reasonable doubt.

However, Silva-Ibarra has filed a motion for summary disposition, conceding that these issues are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and explaining that he seeks to preserve the issues for possible Supreme Court review. Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Silva-Ibarra's motion for summary disposition is GRANTED, and the judgment of the district court is AFFIRMED.