

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

United States Court of Appeals
Fifth Circuit

FILED

March 21, 2019

Lyle W. Cayce
Clerk

No. 18-11031
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARTURO TORRES-CABRERA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-627-1

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:*

Arturo Torres-Cabrera appeals his conviction for illegal reentry after deportation and his sentence of 33 months of imprisonment and two years of supervised release. He argues that his sentence exceeded the statutory maximum because the enhanced penalty provision of 8 U.S.C. § 1326(b)(1) is unconstitutional. He also asserts that his guilty plea was involuntary because he was not admonished that his prior felony conviction could only be used to

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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enhance his sentence under § 1326(b)(1) if it was submitted to a jury and proved beyond a reasonable doubt.

However, Torres-Cabrera 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). He explains 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), Torres-Cabrera's motion is GRANTED, and the district court's judgment is AFFIRMED.