

United States Court of Appeals for the Fifth Circuit

No. 22-50498
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 21, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARCOS JUAN MARTIN-ANDRES,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:22-CR-37-1

Before JOLLY, JONES, and HO, *Circuit Judges.*

PER CURIAM:*

Marcos Juan Martin-Andres appeals his conviction for illegal reentry and his sentence of 46 months of imprisonment and three years of supervised release. He argues for the first time on appeal that his sentence exceeds the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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statutory maximum because the enhanced penalty provisions of 8 U.S.C. § 1326(b) are unconstitutional.

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