

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 10, 2022

Lyle W. Cayce
Clerk

No. 22-50544
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CECILIO TORRES-IBARRA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:22-CR-239-1

Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Cecilio Torres-Ibarra appeals his conviction for illegal reentry and his sentence of 18 months of imprisonment and three years of supervised release. He argues, for the first time on appeal, that his sentence exceeds the statutory

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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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). Torres-Ibarra 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), Torres-Ibarra's motion is GRANTED, and the district court's judgment is AFFIRMED.