

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

No. 17-10837
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 27, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RENE MARTINEZ-HERNANDEZ, also known as Rene Martinez, also known as Rene Hernandez Martinez, also known as Jose Isabel Martinez-Aguilar,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:16-CR-437-1

Before REAVLEY, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:*

Rene Martinez-Hernandez appeals his conviction and 30-month sentence for illegal reentry after removal from the United States. He argues that his sentence exceeded the statutory maximum because the enhanced penalty provision of 8 U.S.C. § 1326(b) is unconstitutional. He also asserts that his guilty plea was invalid because he was not admonished that his prior felony

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 17-10837

conviction could not be used to enhance his sentence under § 1326(b) unless it was submitted to a jury and proved beyond a reasonable doubt.

However, Martinez-Hernandez 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), Martinez-Hernandez's motion is GRANTED. The district court's judgment is AFFIRMED.