

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

No. 17-11137
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
April 20, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE VILLANUEVA-CARDENAS,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-164-1

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Jose Villanueva-Cardenas appeals his conviction for illegal reentry after deportation and his sentence of 32 months of imprisonment and three 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) is unconstitutional. He also asserts that his guilty plea was invalid because he was not admonished that his prior felony conviction could not 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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) unless it was submitted to a jury and proved beyond a reasonable doubt.

However, Villanueva-Cardenas 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), Villanueva-Cardenas's motion is GRANTED. The district court's judgment is AFFIRMED.