

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 30, 2022

Lyle W. Cayce
Clerk

No. 21-51006
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANTONINO LOPEZ-CERVANTEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-510-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Antonino Lopez-Cervantez appeals his conviction of illegal reentry after removal and his sentence of 16 months of imprisonment and three years of supervised release. He maintains 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* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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.

Lopez-Cervantez 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). Lopez-Cervantez states that he has 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), the motion is GRANTED, and the judgment is AFFIRMED.