

United States Court of Appeals
for the Fifth Circuit

No. 22-50208
CONSOLIDATED WITH
No. 22-50209
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 3, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ARTURO VILLALOBOS-FRANCO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:18-CR-307-1
USDC No. 4:21-CR-848-1

Before SMITH, WIENER, and ELROD, *Circuit Judges.*

PER CURIAM:*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 22-50208
c/w No. 22-50209

Defendant-Appellant Arturo Villalobos-Franco appeals his conviction and sentence for illegal reentry after removal in violation of 8 U.S.C. § 1326(a) and (b)(2), consolidated here with the revocation of a term of supervised release for a prior offense. He challenges the constitutionality of 8 U.S.C. § 1326(b), which increases the maximum punishment based on a prior felony or aggravated felony conviction.

Villalobos-Franco moves for summary disposition of his own appeal, conceding that the only issue before us is foreclosed by Supreme Court precedent in *Al-mendarez-Torres v. United States*, 523 U.S. 224 (1998). He raises this issue only to preserve it for further review if case law should develop in his favor. *See United States v. Garza-De La Cruz*, 16 F.4th 1213, 1214 (5th Cir. 2021).

Villalobos-Franco's motion is GRANTED, and the district court's judgment is AFFIRMED.