

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

No. 18-10974
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 1, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CHRISTIAN VAZQUEZ CAPISTRAN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-531-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Christian Vazquez Capistran appeals his conviction for illegal reentry after deportation and his sentence of 26 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)(1) is unconstitutional. He also asserts that his guilty plea was involuntary because he was not admonished that his prior felony conviction

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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could only be used to enhance his sentence under § 1326(b)(1) if it was submitted to a jury and proved beyond a reasonable doubt.

However, Vazquez Capistran 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). He explains 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), Vazquez Capistran's motion is GRANTED, and the district court's judgment is AFFIRMED.