

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

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No. 18-11031  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

March 21, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARTURO TORRES-CABRERA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:17-CR-627-1

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Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:\*

Arturo Torres-Cabrera appeals his conviction for illegal reentry after deportation and his sentence of 33 months of imprisonment and two 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 could only be used to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

However, Torres-Cabrera 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), Torres-Cabrera's motion is GRANTED, and the district court's judgment is AFFIRMED.