

United States Court of Appeals
for the Fifth Circuit

No. 22-50640
CONSOLIDATED WITH
No. 22-50641

United States Court of Appeals
Fifth Circuit

FILED

April 3, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MIGUEL LUX-TUM,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-299-1
USDC No. 4:22-CR-83-1

Before JONES, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Miguel Lux-Tum appeals his conviction and sentence for reentry after deportation under 8 U.S.C. § 1326(a) and (b)(1). Lux-Tum argues that treating a prior felony or aggravated felony conviction that increases the

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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statutory maximum under § 1326(b) as a sentencing factor, rather than a separate element of the offense, violates the Constitution. While Lux-Tum's 16-month term of imprisonment was within the otherwise applicable statutory maximum in § 1326(a), he complains that his three-year term of supervised release exceeds the one-year statutory maximum that applies without a § 1326(b) enhancement. *See* 18 U.S.C. § 3559(a), 3583(b). He has filed an unopposed motion for summary disposition and a letter brief explaining that he has raised the issue only to preserve it for further review and correctly conceding that his argument 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). Lux-Tum does not challenge or make any arguments regarding the consolidated appeal from his supervised release revocation proceeding.

Because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Lux-Tum's motion is GRANTED, and the judgment of the district court is AFFIRMED.