

# United States Court of Appeals for the Fifth Circuit

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No. 23-50145  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

October 5, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ISMAEL ROBLES-PEREZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:22-CR-1119-1

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Before WILLETT, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:\*

Ismael Robles-Perez appeals his sentence for illegal reentry under 8 U.S.C. § 1326(a) and (b)(1), arguing that § 1326(b) is unconstitutional because it permits a sentence above the otherwise-applicable statutory maximum based on facts not charged or proved beyond a reasonable doubt. He has filed an unopposed motion for summary disposition, conceding this

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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argument is foreclosed by *Almendarez-Torres v. United States*,<sup>1</sup> but explaining that he raises it in order to preserve the argument for further review.

Because Robles-Perez is correct in conceding that his argument is foreclosed,<sup>2</sup> summary disposition is appropriate.<sup>3</sup> Accordingly, his motion is GRANTED, and the judgment of the district court is AFFIRMED.

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<sup>1</sup> 523 U.S. 224 (1998).

<sup>2</sup> *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019) (explaining that because the Supreme Court has preserved *Almendarez*, it still controls the issue).

<sup>3</sup> See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).