

United States Court of Appeals for the Fifth Circuit

No. 21-51184
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 18, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ULISES VARELA-MEJIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:20-CR-1185-1

Before JOLLY, JONES, and HO, *Circuit Judges.*

PER CURIAM:*

Ulises Varela-Mejia appeals his conviction and sentence for illegal reentry into the United States under 8 U.S.C. § 1326. For the first time on appeal, Varela-Mejia contends that the recidivism enhancement in § 1326(b) is unconstitutional because it permits a sentence above the otherwise-

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

applicable statutory maximum established by § 1326(a) based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He has filed an unopposed motion for summary disposition and a letter brief in which he concedes that his claim is foreclosed and asserts that he has raised the issue only to preserve it for further review.

As Varela-Mejia concedes, the sole issue that he raises on appeal 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). Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the motion is GRANTED, and the judgment of the district court is AFFIRMED.