

United States Court of Appeals
for the Fifth Circuit

No. 22-50416
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 28, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RUBEN HERNANDEZ-CORREA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:22-CR-18-1

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:*

Ruben Hernandez-Correa appeals his conviction for illegal reentry and his sentence of 30 months of imprisonment and three years of supervised release. He argues for the first time on appeal that his sentence exceeds 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* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 22-50416

statutory maximum because the enhanced penalty provisions of 8 U.S.C. § 1326(b) are unconstitutional.

Hernandez-Correa has filed an unopposed motion for summary disposition and a letter brief correctly conceding that this issue 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). He states that he raises the issue only to preserve it for possible further review. Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Hernandez-Correa's motion is GRANTED, and the district court's judgment is AFFIRMED.