

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-41133  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PASQUAL OSORNIA-VARELA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-01-CR-491-ALL  
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August 21, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:\*

Pasqual Osornia-Varela appeals his guilty-plea conviction and sentence for violating 8 U.S.C. § 1326 by being found in the United States, without permission, following his deportation subsequent to an aggravated felony conviction. He argues that his indictment did not allege that he possessed the necessary mens rea, general intent, and therefore failed to charge an offense.

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

As Osornia-Varela concedes, however, his argument is foreclosed by Fifth Circuit precedent. See United States v. Guzman-Ocampo, 236 F.3d 233, 237-39 (5th Cir. 2000), cert. denied, 533 U.S. 953 (2001); see also United States v. Berrios-Centeno, 250 F.3d 294, 297-300 (5th Cir.), cert. denied, 122 S. Ct. 288 (2001). He raises the argument only to preserve it for Supreme Court review.

The district court's judgment is AFFIRMED.

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that the judgment of the district court be affirmed and that an appellee's brief not be required. The motion is GRANTED.

AFFIRMED; MOTION GRANTED.