

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50928
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDUARDO FELICIANO ORTIZ-GRAJEDA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-03-CR-370-ALL-PRM

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Eduardo Feliciano Ortiz-Grajeda appeals the sentence imposed following his guilty plea conviction of being found in the United States after deportation/removal in violation of 8 U.S.C. § 1326. Ortiz-Grajeda argues that his prior removal hearing deprived him of due process and therefore that the removal may not be used to establish an element of the charge that he was in the United States unlawfully after removal. Ortiz-Grajeda also argues that his sentence violated due process because it exceeded the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

statutory maximum sentence for the offense charged in the indictment. He concedes that his arguments are foreclosed by Fifth Circuit precedent. Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998); United States v. Lopez-Ortiz, 313 F.3d 225 (5th Cir. 2002), cert. denied, 537 U.S. 1135 (2003). He raises these issues solely to preserve them for possible further review.

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

AFFIRMED; MOTION GRANTED.