

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 25, 2009

No. 06-41374
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GUILLERMO MORALES-PITONES,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:05-CR-1065-ALL

Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:*

Guillermo Morales-Pitones (Morales), appeals his sentence of 82 months of imprisonment for illegally reentering the United States after deportation. As his sole issue, Morales challenges the district court's denial of his request for an offense level reduction for acceptance of responsibility. He notes that, at trial, he contested only the question of his alienage and that he conceded the other elements of the offense of illegal reentry.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Alienage is one of the elements of an offense under § 1326. *See United States v. Cardenas-Alvarez*, 987 F.2d 1129, 1131-1132 (5th Cir. 1993). By challenging at trial whether he was an alien, Morales contested one of the essential factual elements of the offense of illegal reentry and put the Government to its burden of proof as to this element. The district court's determination that Morales was not entitled to an adjustment for acceptance of responsibility was not "without foundation." *United States v. Washington*, 340 F.3d 222, 227 (5th Cir. 2003); *see* U.S.S.G. § 3E1.1, comment. (n.2).

AFFIRMED.