

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

August 4, 2022

Lyle W. Cayce  
Clerk

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No. 21-51118  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

OSWALDO OMAR RAMIREZ-ORTIZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:21-CR-622-1

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Before JONES, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:\*

Oswaldo Omar Ramirez-Ortiz appeals his conviction and sentence for illegal reentry after deportation under 8 U.S.C. § 1326(a) and (b)(2). Ramirez-Ortiz argues that treating a prior felony or aggravated felony conviction that increases the statutory maximum under § 1326(b) as a

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 21-51118

sentencing factor, rather than a separate element of the offense, violates the Constitution. He has filed an unopposed motion for summary disposition and a letter brief explaining that he has raised the issue only to preserve it for further review and correctly conceding that his argument 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), Ramirez-Ortiz's motion is GRANTED, and the judgment of the district court is AFFIRMED.