

# United States Court of Appeals for the Fifth Circuit

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No. 23-50455  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

October 31, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

NOEMY RAMIREZ-GOMEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:22-CR-627-1

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Before WILLETT, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:\*

Noemy Ramirez-Gomez appeals his conviction and sentence for illegal reentry after removal. The sole argument he raises on appeal is that 8 U.S.C. § 1326(b) is unconstitutional because it permits a sentence above the otherwise applicable statutory maximum established by § 1326(a) based on

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt.

Ramirez-Gomez filed an unopposed motion for summary disposition and a letter brief conceding that this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). He seeks to preserve the issue for possible Supreme Court review. We have held that subsequent Supreme Court decisions such as *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013), did not overrule *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019). Thus, Ramirez-Gomez is correct that his argument is foreclosed.

Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Ramirez-Gomez’s motion is GRANTED, and the district court’s judgment is AFFIRMED.