

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

February 24, 2022

Lyle W. Cayce  
Clerk

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No. 21-50860  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

HECTOR CERVANTES-RESENDIZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 4:21-CR-381-1

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Before JOLLY, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:\*

Hector Cervantes-Resendiz appeals the sentence imposed following his guilty plea conviction for illegal reentry after having previously been removed, pursuant to 8 U.S.C. § 1326(a) and (b)(2). Cervantes-Resendiz contends, for the first time on appeal, that it violates the Constitution to treat

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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a prior conviction that increases the statutory maximum under § 1326(b) as a sentencing factor, rather than as an element of the offense. Cervantes-Resendiz concedes that this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the issue for future review. In addition, he has filed an unopposed motion for summary disposition.

As Cervantes-Resendiz concedes, the sole issue raised on appeal is foreclosed by *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019); *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014). Because his position “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case,” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), summary disposition is proper. Accordingly, Cervantes-Resendiz’s motion for summary disposition is GRANTED, and the judgment of the district court is AFFIRMED.