

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 17, 2022

Lyle W. Cayce
Clerk

No. 21-50974
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

OSCAR CONTRERAS-ZAMARRIPA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-478-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Oscar Contreras-Zamarripa appeals his conviction and sentence for illegal reentry into the United States pursuant to 8 U.S.C. § 1326(a) and (b)(1). For the first time on appeal, Contreras-Zamarripa argues that treating a prior conviction that increases the statutory maximum under § 1326(b) as a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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sentencing factor, rather than as an 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 conceding correctly that this 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), Contreras-Zamarripa's motion is GRANTED, and the judgment of the district court is AFFIRMED.