

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

March 15, 2022

Lyle W. Cayce  
Clerk

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No. 21-50822  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

RODRIGO JIMENEZ-RAMIREZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
No. 4:21-CR-280-1

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

PER CURIAM:\*

Rodrigo Jimenez-Ramirez appeals his conviction and sentence for illegal reentry under 8 U.S.C. § 1326(a) and (b)(1). For the first time on appeal, he contends that § 1326(b) is unconstitutional because it permits 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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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defendant to be sentenced above the statutory maximum under § 1326(a) based on the fact of a prior conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. He correctly concedes that the argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625–26 (5th Cir. 2007). He wishes to preserve the issue for further review and has filed a letter brief and an unopposed motion for summary disposition.

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