

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-10377
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 24, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN VIRAMONTES-SANCHEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CR-257-1

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Juan Viramontes-Sanchez appeals his sentence of 10 months of imprisonment and three years of supervised release for illegal reentry after removal. On appeal, he argues that his indictment did not allege that he had a prior conviction, and therefore, it was a violation of his due process rights for the district court to impose a sentence under 8 U.S.C. § 1326(b). He contends that his sentence exceeds the statutory maximum punishment under § 1326(a).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 17-10377

The Government has filed an unopposed motion for summary affirmance, asserting that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), forecloses Viramontes-Sanchez's argument. Viramontes-Sanchez concedes that his argument is foreclosed and explains that he raises it only to preserve it for further review; thus, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED. The judgment is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.