

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

No. 17-11487
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 12, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HERIBERTO GARCIA-HERNANDEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:17-CR-161-1

Before DAVIS, COSTA, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Heriberto Garcia-Hernandez appeals the two-year term of supervised release imposed following his guilty plea conviction for being found unlawfully present in the United States after previous deportation. He argues that his sentence is unconstitutional because it exceeds the maximum sentence for the 18 U.S.C. § 1326(a) offense charged in the indictment. Specifically, he contends that in order to trigger a sentencing enhancement under § 1326(b), the fact of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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a prior conviction must be alleged in the indictment and proved to a jury. He correctly concedes, however, that his 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). Thus, summary affirmance is appropriate. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

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