

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

No. 17-50156
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 21, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARTIN BARCENAS-PATINO,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:16-CR-567-1

Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Martin Barcenas-Patino appeals his sentence of 48 months of imprisonment and three years of supervised release for illegal reentry after deportation. He argues that the district court erroneously determined that his sentence was subject to an enhancement under 8 U.S.C. § 1326(b). He asserts that his indictment did not allege that he had a prior conviction and that,

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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therefore, the enhancement violated his due process rights because his sentence exceeded the statutory maximum.

The Government has filed an unopposed motion for summary affirmance, asserting that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), forecloses Barcenas-Patino's argument. Barcenas-Patino concedes that his argument was rejected in *Almendarez-Torres* and explains that he raises it 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.