

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

United States Court of Appeals
Fifth Circuit

FILED

July 2, 2018

Lyle W. Cayce
Clerk

No. 17-50738
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

ELISEO GUEVARA-GUEVARA,

Defendant–Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:16-CR-1106-1

Before JONES, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Eliseo Guevara-Guevara pleaded guilty to illegal reentry into the United States and was sentenced to 48 months of imprisonment and three years of supervised release. On appeal, he argues that his indictment did not allege that he had a prior conviction, and therefore, the district court’s sentence, imposed under 8 U.S.C. § 1326(b) and in excess of the statutory maximum sentence under § 1326(a), violated his due process rights.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 17-50738

The Government has filed an unopposed motion for summary affirmance in lieu of filing an appellate brief, or, alternatively an extension of time to file a brief, because Guevara-Guevara's argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). As Guevara-Guevara concedes that his argument is foreclosed and is raised only to preserve it for further review, 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 Government's alternative motion for an extension of time to file its brief is DENIED as unnecessary. The district court's judgment is AFFIRMED.