

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

\_\_\_\_\_  
No. 18-11243  
Summary Calendar  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**  
June 10, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS CASTANEDA-TORRES,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:18-CR-63-1  
\_\_\_\_\_

Before JONES, HIGGINSON, and OLDHAM, Circuit Judges.

PER CURIAM:\*

Luis Castaneda-Torres, represented by the Federal Public Defender, appeals his above-guidelines sentence of 12 months of imprisonment and three years of supervised release on his conviction for illegal reentry after removal from the United States, in violation of 8 U.S.C. § 1326(a), (b)(1). On appeal, he argues that his indictment did not allege that he had a prior conviction and, therefore, his sentence under § 1326(b)(1) violates due process because the

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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term of supervised release exceeds the statutory maximum sentence under § 1326(a). Seeking to preserve the issue for further review, he correctly concedes that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-28, 235, 118 S. Ct. 1219, 1222-23, 1226 (1998), in which the Supreme Court held that convictions used to enhance a sentence under § 1326(b) need not be set forth in the indictment.

The Government has filed an unopposed motion for summary affirmance. As Castaneda-Torres correctly 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, and the judgment is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.