

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

No. 18-50250
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
September 14, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS BARRAZA-CARRERA,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:17-CR-875-1

Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Jose Luis Barraza-Carrera appeals the sentence imposed following his guilty plea conviction for being found unlawfully present in the United States after previous deportation. He argues that his three-year term of supervised release is unconstitutional because it exceeds the maximum sentence for the 8 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 proven to a jury; therefore, he asserts that § 1326(b) is unconstitutional. 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).

The Government has filed an unopposed motion for summary affirmance and, alternatively, seeks an extension of time to file its brief. Because the issue is foreclosed, 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 a brief is DENIED, and the judgment of the district court is AFFIRMED.