

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

No. 18-50360
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 30, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FACUNDO RUIZ-RUIZ, also known as Javier Hernandez-Perez,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:17-CR-1114-1

Before REAVLEY, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Facundo Ruiz-Ruiz appeals the within-Guidelines sentence of 57 months of imprisonment that he received after his guilty plea for illegal reentry, 8 U.S.C. § 1326. He challenges this sentence as unconstitutional because it exceeds the statutory maximum contained in § 1326(a), and the two prior convictions used to increase his sentence under § 1326(b)(2) were not alleged in the indictment or included in the stipulated factual basis that he signed.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 18-50360

Ruiz-Ruiz concedes this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235, 239 (1998). *E.g.*, *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). He seeks to preserve the issue for possible Supreme Court review.

The Government has moved for summary affirmance or alternatively, an extension of time to file a brief. Because the sole issue presented 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.