

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

No. 18-50884
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
March 29, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

PERFECTO MALDONADO, also known as Fernando Farjardo Solorzano,
also known as Perfecto Morales Maldonado,
also known as Perfect Maldonado-Moraks, also known as Pepe Maldonado,
also known as Perfecto Maldonado-Morales,

Defendant–Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 1:18-CR-278-1

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Perfecto Maldonado appeals the within-guidelines sentence of 21 months

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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that he received for illegal reentry in violation of 8 U.S.C. § 1326. He challenges that sentence as unconstitutional because it exceeds the statutory maximum in § 1326(a) and because the conviction used to increase the sentence under § 1326(b)(2) was not alleged in the indictment. Maldonado concedes that 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 moves for summary affirmance or, alternatively, for an extension of time to file its 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, its alternative motion for an extension of time to file a brief is DENIED, and the judgment is AFFIRMED.