

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

United States Court of Appeals
Fifth Circuit

FILED

August 7, 2020

Lyle W. Cayce
Clerk

No. 20-50074
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JULIAN HERNANDEZ-NEVAREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:19-CR-2969-1

Before HAYNES, WILLETT and HO, Circuit Judges.

PER CURIAM:*

Julian Hernandez-Nevarez appeals the within-guidelines, 37-month sentence imposed following his guilty plea conviction for illegally reentering the United States after removal, in violation of 8 U.S.C. § 1326. He argues that his sentence was imposed under an unconstitutional sentencing provision because § 1326(b) permits a defendant's sentence to be enhanced even if the fact of a prior conviction is not alleged in the indictment and proved beyond a

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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reasonable doubt. He correctly concedes that his claim is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he raises the issue to preserve it for further possible review. *See 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).

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.