

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

No. 16-11706
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
August 3, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LORETO RAMOS-PABLO,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CR-134-1

Before REAVLEY, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:*

Loreto Ramos-Pablo pleaded guilty to illegal reentry after removal from the United States and was sentenced to 41 months in prison, to be followed by a two-year term of supervised release. Ramos-Pablo argues on appeal that his indictment failed to invoke the sentencing enhancement in 8 U.S.C. § 1326(b)(2), as his indictment failed to allege the existence of a prior

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 16-11706

conviction. He contends that his sentence exceeds the statutory maximum penalty for a conviction under § 1326(a) and violates his due process rights.

The Government has filed an unopposed motion for summary affirmance, asserting that Ramos-Pablo's argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). As Ramos-Pablo 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 motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.