

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

No. 17-51076
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 27, 2018
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SANTOS ORLANDO DIAZ-MARTINEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:17-CR-1255-1

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Santos Orlando Diaz-Martinez appeals the 46-month within-guidelines sentence imposed following his guilty plea conviction for illegal reentry after deportation. Raising one issue, Diaz-Martinez argues that because his indictment did not specify the prior felony conviction that formed the basis of his sentencing enhancement, his sentence, imposed under 8 U.S.C. § 1326(b)(1), exceeded the two-year maximum sentence under § 1326(a) and

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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therefore violated his due process rights. The Government has filed an unopposed motion for summary affirmance and, alternatively, seeks an extension of time to file its brief.

As the Government argues and Diaz-Martinez concedes, the only issue raised on appeal 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); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). 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 and the judgment is AFFIRMED. The Government's alternative motion for an extension of time to file its brief is DENIED.