

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

No. 19-50393
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 27, 2019

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff-Appellee

v.

SANDRA SUGEY CONTRERAS-TORRES,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:19-CR-77-1

Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Sandra Sugey Contreras-Torres appeals the 24-month sentence imposed following her guilty plea conviction for being found unlawfully present in the United States after previous deportation. She argues that her sentence was imposed under an unconstitutional statute, 8 U.S.C. § 1326(b). Specifically, she contends that in order to trigger a sentencing enhancement under Section 1326(b), the fact of a prior conviction must be alleged in the indictment 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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proven to a jury; therefore, she asserts that Section 1326(b) is unconstitutional. She correctly concedes that her argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but raises the issue to preserve 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 as moot, and the judgment of the district court is AFFIRMED.