

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

United States Court of Appeals  
Fifth Circuit

**FILED**

December 12, 2019

Lyle W. Cayce  
Clerk

---

No. 19-50504

Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RAUL MENDOZA-CEPEDA,

Defendant-Appellant

---

Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:18-CR-1509-1

---

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:\*

Raul Mendoza-Cepeda appeals the 27-month guidelines sentence and three-year term of supervised release imposed following his guilty plea conviction for being found unlawfully in the United States after previous removal. He argues that his sentence is unconstitutional because it exceeds the maximum sentence of 18 U.S.C. § 1326(a) charged in the indictment. However, he correctly concedes that the issue whether his eligibility for 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 19-50504

sentencing enhancement under § 1326(b) must be alleged in the indictment and proved to a jury 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). Thus, summary affirmance is appropriate. *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.