

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

No. 16-11676
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
September 20, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE FRANCISCO GARCIA-PUGA, also known as Ernesto Salas-Ibarra,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CR-387-1

Before WIENER, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Jose Francisco Garcia-Puga pleaded guilty to illegal reentry into the United States and was sentenced to 45 months of imprisonment and two years of supervised release. On appeal, he argues that his indictment did not allege that he had a prior conviction, and therefore, it was a violation of his due process rights for the district court to impose a sentence under 8 U.S.C.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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§ 1326(b). He contends that his sentence exceeds the statutory maximum sentence under § 1326(a).

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