

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

No. 17-10016
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 10, 2017
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

HECTOR ARTURO REA-PONCE,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 3:16-CR-193-1

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Hector Rea-Ponce raises an

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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argument that is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 228, 235 (1998), which held that convictions used to enhance a sentence under 8 U.S.C. § 1326(b)(2) need not be set forth in the indictment. Accordingly, the government's unopposed motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file its brief is DENIED as unnecessary, and the judgment is AFFIRMED.