

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

No. 17-40045
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 18, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FEDERICO ORTIZ-LOPEZ, also known as Federico Ortiz,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:16-CR-1068-1

Before REAVLEY, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:*

Federico Ortiz-Lopez appeals the 37 month sentence imposed following his conviction of being found in the United States without permission, following removal. *See* 8 U.S.C. § 1326(a), (b). He contends that he was improperly sentenced under § 1326(b) because the statute is unconstitutional on its face. He also contends that the statute is unconstitutional as applied in

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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his case because his prior conviction was not alleged in the indictment or proved beyond a reasonable doubt.

Ortiz-Lopez acknowledges that his argument 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) need not be set forth in the indictment or proved beyond a reasonable doubt. Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.