

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

No. 17-50399
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 16, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

JOSE DANILO CONTRERAS-MARTINEZ,

Defendant–Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 2:16-CR-1135-1

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Jose Contreras-Martinez appeals his 27-month sentence for illegal

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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reentry after deportation. He asserts that his indictment did not allege that he had a prior conviction, so his sentence under 8 U.S.C. § 1326(b) violated his due-process rights by exceeding the two-year statutory maximum in § 1326(a).

The government has filed an unopposed motion for summary affirmance, asserting that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), forecloses Contreras-Martinez's position. Contreras-Martinez concedes that his argument was rejected in *Almendarez-Torres* and explains that he raises it to preserve it for further review; thus, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the 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.