

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

No. 18-50741
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 18, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS FRANCISCO IBARRA-MORADO,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:18-CR-289-1

Before HIGGINBOTHAM, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:*

Luis Francisco Ibarra-Morado argues that his 36-month, within-guidelines sentence for illegal reentry under 8 U.S.C. § 1326(b)(1) violates his due process rights because his sentence was enhanced based on a prior felony conviction that was not charged in the indictment. As he correctly concedes, his argument is foreclosed by the Supreme Court's holding in *Almendarez-Torres v. United States*, 523 U.S. 224, 239-47 (1998), and he raises the issue

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 18-50741

only to preserve it for further review. *See United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007).

AFFIRMED.