

No. __-____

IN THE
SUPREME COURT OF THE UNITED STATES

JUAN VIRAMONTES-SANCHEZ,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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Northern District of Texas

APPENDIX A

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

No. 17-10377
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 24, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN VIRAMONTES-SANCHEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CR-257-1

Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Juan Viramontes-Sanchez appeals his sentence of 10 months of imprisonment and three years of supervised release for illegal reentry after removal. 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. § 1326(b). He contends that his sentence exceeds the statutory maximum punishment under § 1326(a).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The Government has filed an unopposed motion for summary affirmance, asserting that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), forecloses Viramontes-Sanchez's argument. Viramontes-Sanchez concedes that his argument is foreclosed and explains that he raises it only 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 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.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JUAN VIRAMONTES-SANCHEZ

Case Number: 4:16-CR-00257-O(01)

U.S. Marshal's No.: 92104-080

J. Michael Worley, Assistant U.S. Attorney

Michael A. Lehmann, Attorney for the Defendant

On December 7, 2016 the defendant, JUAN VIRAMONTES-SANCHEZ, entered a plea of guilty as to Count One of the Indictment filed on November 9, 2016. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. §§ 1326 (a) and (b)(1)/(2))	Illegal Reentry After Deportation	09/14/2016	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on November 9, 2016.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed March 20, 2017.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed March 23, 2017.

Judgment in a Criminal Case

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Defendant: JUAN VIRAMONTES-SANCHEZ

Case Number: 4:16-CR-00257-O(1)

IMPRISONMENT

The defendant, JUAN VIRAMONTES-SANCHEZ, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Ten (10) months** as to Count One of the Indictment filed on November 9, 2016.

The Court recommends to the BOP that the defendant be housed at FMC Fort Worth, Texas, if possible.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Three (3) years** as to Count One of the Indictment filed on November 9, 2016.

As a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 USC § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions contained in the Judgment and shall comply with the mandatory and special conditions stated herein:

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

Judgment in a Criminal Case

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Defendant: JUAN VIRAMONTES-SANCHEZ

Case Number: 4:16-CR-00257-O(1)

- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer; and,

report in person to the U.S. Probation Office in the district to which the defendant is released from custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case

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Defendant: JUAN VIRAMONTES-SANCHEZ

Case Number: 4:16-CR-00257-O(1)

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY _____
Deputy Marshal