

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

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No. 17-50963  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 6, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAVIER VEGA-OROZCO, also known as Javier Orozco Vega, also known as  
Javier Vega Orozco, also known as Javier Orozco-Vega,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:17-CR-247-1

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Before HIGGINBOTHAM, JONES, and SMITH, Circuit Judges.

PER CURIAM:\*

Javier Vega-Orozco, represented by the Federal Public Defender, appeals his within-guidelines sentence for illegal reentry after removal from the United States, in violation of 8 U.S.C. § 1326(a), (b)(1). On appeal, Vega-Orozco challenges the Supreme Court's ruling in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), arguing that his sentence pursuant to § 1326(b)(1)

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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is unconstitutional. Seeking to preserve the issue for possible review by the Supreme Court, he correctly concedes that his argument is foreclosed. *See United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). In *Almendarez-Torres*, the Supreme Court held that for the purposes of a statutory sentencing enhancement, a prior conviction is not a fact that must be alleged in the indictment or found by a jury beyond a reasonable doubt. 523 U.S. at 239-47.

The Government has filed an unopposed motion for summary affirmance. Because Vega-Orozco's argument is foreclosed, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government's motion is GRANTED, and the judgment is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.