

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

No. 18-10664
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 16, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JORGE ROGELIO REVELES-SANTANA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-254-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Jorge Rogelio Reveles-Santana appeals the sentence imposed following his guilty plea conviction for illegal reentry after deportation. He asserts that the indictment did not allege the sentencing enhancement in 8 U.S.C. § 1326(b) and, therefore, his 40-month sentence exceeds the statutory maximum sentence authorized under § 1326(a) and violates his due process rights. He concedes that the argument is foreclosed by *Almendarez-Torres*, 523 U.S. 224

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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(1998), but states that he seeks to preserve the issue for possible further review because subsequent Supreme Court decisions indicate that the Court may reconsider the issue.

In *Almendarez-Torres*, 523 U.S. at 239-47, the Supreme Court held that, for 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. This court has held that subsequent Supreme Court decisions did not overrule *Almendarez-Torres*. 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). Thus, Reveles-Santana's argument is foreclosed, and summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's unopposed motion for summary affirmance is GRANTED, the alternative motion for an extension of time is DENIED, and the judgment of the district court is AFFIRMED.