

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

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No. 15-40108  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

December 5, 2016

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LARA-GARCIA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:14-CR-9-1

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Before HIGGINBOTHAM, PRADO, and HAYNES, Circuit Judges.

PER CURIAM:\*

Following his guilty plea conviction for illegal reentry after removal, Jose Lara-Garcia was sentenced within the recommended guidelines range to 46 months of imprisonment. Lara-Garcia argues that the district court erred by convicting, sentencing, and entering judgment against him pursuant to 18 U.S.C. § 1326(b)(2) based upon its determination that his 2012 conviction for aggravated assault with a deadly weapon in violation of Texas Penal Code

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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§ 22.02(a)(2) qualified as a conviction for a crime of violence under 18 U.S.C. § 16(b) and thus one for an aggravated felony under 8 U.S.C. § 1101(a)(43)(F). Relying primarily on *Johnson v. United States*, 135 S. Ct. 2551 (2015), he argues that the definition of a crime of violence in § 16(b), as incorporated by reference into the definition of an aggravated felony in § 1101(a)(43)(F), is unconstitutionally vague on its face. He further contends that this court cannot apply § 16(b) in this case without violating due process.

The Government has filed an unopposed motion for summary affirmance, urging that Lara-Garcia's arguments are foreclosed by our decision in *United States v. Gonzalez-Longoria*, 831 F.3d 670 (5th Cir. 2016) (en banc), *petition for cert. filed* (Sept. 30, 2016) (No. 16-6259). The Government is correct that *Gonzalez-Longoria* forecloses Lara-Garcia's facial vagueness challenge to § 16(b) and his challenge to our application of § 16(b) on due process grounds.<sup>1</sup> *See id.* Accordingly, the motion for summary affirmance is GRANTED, and the district court's judgment is AFFIRMED. The Government's alternate motion for an extension of time to file a brief is DENIED.

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<sup>1</sup> The recent grant of certiorari by the United States Supreme Court on the issue whether § 16(b) is unconstitutional in light of *Johnson* in *Lynch v. Dimaya*, \_\_\_ S. Ct. \_\_\_, 2016 WL 3232911 (Sept. 29, 2016), does not alter the analysis. This court is bound by its own precedent unless and until that precedent is altered by a decision of the Supreme Court. *See Wicker v. McCotter*, 798 F.2d 155, 157-58 (5th Cir. 1986).