

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

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No. 16-10588  
Conference Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 21, 2017

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FERNANDO VIERRA-GARCIA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:15-CR-109-1

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Before JOLLY, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Fernando Vierra-Garcia raises an argument that is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 228, 235 (1998), which held that convictions used to enhance a sentence under 8 U.S.C. § 1326(b)(2) need not be set forth in the indictment. Accordingly, the motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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