

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

No. 17-50404
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 8, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GERARDO MADRID,

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 2:16-CR-1095-1

Before REAVLEY, PRADO, and GRAVES, Circuit Judges.

PER CURIAM:*

Gerardo Madrid appeals the 30-month above-guidelines sentence and three-year term of supervised release imposed following his guilty plea conviction for illegal reentry into the United States. He argues that his sentence violates due process because it exceeds the statutory maximum sentence provided in 8 U.S.C. § 1326(a). Madrid concedes that the issue whether his eligibility for a sentencing enhancement under § 1326(b) must be

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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alleged in the indictment and proved to a jury is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). However, he seeks to preserve the issue for possible Supreme Court review because, he argues, subsequent Supreme Court decisions indicate that the Court may reconsider this 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 an indictment or found by a jury beyond a reasonable doubt. Subsequent Supreme Court decisions have not overruled *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014) (considering the effect of *Alleyne v. United States*, 133 S. Ct. 2151 (2013)); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007) (considering the effect of *Apprendi v. New Jersey*, 530 U.S. 466 (2000)). Thus, Madrid's argument is foreclosed.

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