IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50963
Summary Calendar

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

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

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 R. 47.5, the court has determined that this opinion should not
be published and is not precedent except under the limited circumstances set forth in 5TH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