

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

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No. 18-10605  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 8, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MIGUEL ANGEL OLVERA-CRUZ, also known as Miguel Angel Cruz,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:17-CR-212-1

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Before REAVLEY, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

Miguel Angel Olvera-Cruz appeals the 27-month within-Guidelines sentence imposed after he pleaded guilty to illegal reentry, 8 U.S.C. § 1326. He challenges this sentence as unconstitutional because it exceeds the statutory maximum contained in § 1326(a), and the prior conviction used to increase his sentence under § 1326(b) was not alleged in the indictment. Olvera-Cruz concedes that this argument is foreclosed by *Almendarez-Torres v. United*

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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*States*, 523 U.S. 224 (1998). 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*, 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. *Id.* at 239–47. This court has held that subsequent Supreme Court decisions did not overrule *Almendarez-Torres*. See, e.g., *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, Olvera-Cruz’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.