

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JORGE ROGELIO REVELES-SANTANA,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-10664
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
January 16, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JORGE ROGELIO REVELES-SANTANA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-254-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Jorge Rogelio Reveles-Santana appeals the sentence imposed following his guilty plea conviction for illegal reentry after deportation. He asserts that the indictment did not allege the sentencing enhancement in 8 U.S.C. § 1326(b) and, therefore, his 40-month sentence exceeds the statutory maximum sentence authorized under § 1326(a) and violates his due process rights. He concedes that the argument is foreclosed by *Almendarez-Torres*, 523 U.S. 224

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(1998), but states that he seeks to preserve the issue for possible further review because subsequent Supreme Court decisions indicate that the Court may reconsider the 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 the indictment or found by a jury beyond a reasonable doubt. This court has held that subsequent Supreme Court decisions did not overrule *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). Thus, Reveles-Santana'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.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JORGE ROGELIO REVELES-SANTANA

Case Number: 4:17-CR-00254-O(01)

U.S. Marshal's No.: 63569-180

J. Michael Worley, Assistant U.S. Attorney

Cody Cofer, Attorney for the Defendant

On January 31, 2018 the defendant, JORGE ROGELIO REVELES-SANTANA, entered a plea of guilty as to Count One of the Indictment filed on December 5, 2017. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326(a) and (b)(1)/(2)	Illegal Reentry After Deportation	December 15, 2016	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on December 5, 2017.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed May 21, 2018.


REED O'CONNOR
U.S. DISTRICT JUDGE

Signed May 25, 2018.

Judgment in a Criminal Case

Page 2 of 4

Defendant: JORGE ROGELIO REVELES-SANTANA

Case Number: 4:17-CR-00254-O(1)

IMPRISONMENT

The defendant, JORGE ROGELIO REVELES-SANTANA, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Forty (40) months** as to Count One of the Indictment filed on December 5, 2017.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Two (2) years** as to Count One of the Indictment filed on December 5, 2017.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions recommended by the U.S. Sentencing Commission and shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

Judgment in a Criminal Case

Page 3 of 4

Defendant: JORGE ROGELIO REVELES-SANTANA

Case Number: 4:17-CR-00254-O(1)

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill; and,

take notice that if he is ordered deported from the United States, he must remain outside the United States, unless legally authorized to re-enter. If the defendant re-enters the United States, he must report to the nearest probation office within 72 hours after his return.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

RETURN

Judgment in a Criminal Case

Page 4 of 4

Defendant: JORGE ROGELIO REVELES-SANTANA

Case Number: 4:17-CR-00254-O(1)

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY
Deputy Marshal