

FEB 15 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN GARCIA-OZUNA,

Defendant - Appellant.

No. 07-50312

D.C. No. CR-06-01899-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted February 11, 2008**

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

We have reviewed the record and the opening brief and conclude that the

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). The United States Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998), remains binding on this court until the Court overrules it. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that this court remains bound by the Supreme Court's holding in *Almendarez-Torres* that the district court may enhance a sentence on the basis of prior convictions, even if the fact of those convictions was not found by a jury beyond a reasonable doubt); *see also United States v. Grisel*, 488 F.3d 844 (9th Cir. 2007).

Accordingly, the government's unopposed motion for summary affirmance of the district court's judgment is granted.

AFFIRMED.