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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NOT FOR PUBLICATION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.

HELIODORO SARABIA-REYES,

Defendant - Appellant.

No. 07-50172

D.C. No. CR-06-02049-WQH-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted November 13, 2007**

Before: McKEOWN, TALLMAN and CLIFTON, Circuit Judges.

This is an appeal from the district court's sentence following appellant's guilty plea to a violation of 8 U.S.C. § 1326.

* 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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Appellant's second motion for an extension of time to file the opening brief is granted. The Clerk shall file the opening brief received on August 30, 2007.

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

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

AFFIRMED.