

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-16444
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JUNE 17, 2010 JOHN LEY CLERK
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D. C. Docket No. 09-00192-CR-J-34JRK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAMON ERNESTO CRUZ-PAGUADA,
a.k.a. Pedro Pablo Agurcia,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(June 17, 2010)

Before MARCUS, PRYOR and MARTIN, Circuit Judges.

PER CURIAM:

Ramon Ernesto Cruz-Paguada appeals his sentence of 46 months of

imprisonment, which was imposed after he pleaded guilty to illegally reentering the United States after deportation. 8 U.S.C. § 1326(a). Cruz-Paguada argues, for the first time on appeal, that the district court erred by enhancing his sentence based on his prior conviction for smuggling illegal aliens into the United States, id. § 1324, when that conviction was not charged in his indictment. Cruz-Paguada's argument is foreclosed by the decision of the Supreme Court in Almendarez-Torres v. United States, 523 U.S. 224, 118 S. Ct. 1219 (1998). "[W]e are bound to follow Almendarez-Torres unless and until the Supreme Court itself overrules that decision." United States v. Thomas, 242 F.3d 1028, 1035 (11th Cir. 2001); see also United States v. Greer, 440 F.3d 1267, 1273 (11th Cir. 2006). The district court did not err, much less plainly err, by enhancing Cruz-Paguada's sentence.

Cruz-Paguada's sentence is **AFFIRMED**.