

United States Court of Appeals
for the Fifth Circuit

No. 22-50963
CONSOLIDATED WITH
No. 22-50975

United States Court of Appeals
Fifth Circuit

FILED

April 3, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

VICTOR RUELAS-CIENEGA,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:19-CR-430-1, 4:22-CR-498-1

Before JOLLY, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM: *

Victor Ruelas-Cienega appeals his conviction and sentence under 8 U.S.C. § 1326 for illegal entry into the United States after deportation.¹ He

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

¹ Ruelas-Cienega also appeals the revocation of his supervised release and the 10-month sentence imposed on revocation, but he has abandoned by failing to brief any argument challenging the revocation or revocation sentence. *See United States v. Still*, 102 F.3d 118, 122 n.7 (5th Cir. 1996).

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argues that the recidivism enhancement in § 1326(b) is unconstitutional because it permits a sentence above the otherwise-applicable statutory maximum established by § 1326(a) based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. Ruelas-Cienega has filed an unopposed motion for summary disposition acknowledging that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve it for possible Supreme Court review.

This court has held that subsequent Supreme Court decisions such as *Alleyne v. United States*, 570 U.S. 99 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), did not overrule *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Thus, Ruelas-Cienega is correct that his argument is foreclosed, and summary disposition is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Ruelas-Cienega's motion is GRANTED, and the district court's judgment is AFFIRMED.