

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-41043
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
November 14, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE SOTO-ORTIZ, also known as Eпитacio Valenciana,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:16-CR-297-1

Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Jose Soto-Ortiz appeals the 57-month within-guidelines sentence imposed in connection with his guilty plea conviction for illegal reentry after deportation. Soto-Ortiz argues that the district court plainly erred in characterizing his prior convictions for Texas murder and aggravated assault as crimes of violence within the Guidelines, resulting in an additional criminal history point under U.S.S.G. § 4A1.1(e). He contends that the residual clause

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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of the former version of U.S.S.G. § 4B1.2(a)(2) (2015), is unconstitutional in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), where the Supreme Court held that nearly identical language in the Armed Career Criminal Act was unconstitutionally vague. All of Soto-Ortiz's arguments are foreclosed by *United States v. Jeffries*, 822 F.3d 192, 193-94 (5th Cir.), *reh'g denied*, 829 F.3d 769 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 1328 (2017) and *Beckles v. United States*, 137 S. Ct. 886 (2017).

Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The alternative motion for an extension of time is DENIED as moot.