

United States Court of Appeals for the Fifth Circuit

No. 23-10613
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 8, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE EULALIO AGUILLEN-SERVIN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-375-1

Before WILLETT, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:*

Jose Eulalio Aguillen-Servin appeals his sentence for illegal reentry after deportation, in violation of 8 U.S.C. § 1326(a) and (b)(1). He argues that the enhancement of his sentence under § 1326(b) is unconstitutional because it is based on facts not alleged in the indictment and neither admitted nor proved beyond a reasonable doubt. Aguillen-Servin correctly concedes that

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

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this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). We have held that subsequent Supreme Court decisions, including *Alleyne v. United States*, 570 U.S. 99 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), have not overruled *Almendarez-Torres*. See *United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019). Aguillen-Servin says that he raises this issue merely to preserve it for further review.

The Government has filed an unopposed motion for summary affirmance or, in the alternative, for an extension of time to file a brief on the merits. Because *Almendarez-Torres* forecloses Aguillen-Servin’s argument, summary disposition is appropriate. See *Groendyke Transp. Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government’s motion for summary affirmance is GRANTED, the Government’s alternative motion for an extension of time to file a brief is DENIED, and the district court’s judgment is AFFIRMED.