

# United States Court of Appeals for the Fifth Circuit

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No. 23-50375  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

December 8, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JESUS BARRON-BAUTISTA,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:22-CR-788-1

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

PER CURIAM:\*

Jesus Barron-Bautista appeals the sentence imposed following his conviction for illegal reentry into the United States in violation of 8 U.S.C. § 1326(a). He contends for the first time on appeal that the sentencing enhancement in § 1326(b) is unconstitutional because it permits a sentence above the otherwise applicable statutory maximum established by § 1326(a)

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

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based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. Barron-Bautista filed an unopposed motion for summary disposition, acknowledging that the Supreme Court rejected this argument in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and explaining that he seeks only to preserve it for possible Supreme Court review.

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). Because *Almendarez-Torres* forecloses Barron-Bautista’s argument, summary disposition is appropriate. See *Groendyke Transp. Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, Barron-Bautista’s motion is GRANTED, and the district court’s judgment is AFFIRMED.