

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

No. 17-40041
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 13, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

OMAR ORLANDO RODRIGUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:15-CR-1314-1

Before JOLLY, DAVIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Omar Orlando Rodriguez pleaded guilty to illegal reentry following deportation and was sentenced to a 33-month term of imprisonment. On appeal, he renews his challenge to the district court's application of the eight-level aggravated felony enhancement of U.S.S.G. § 2L1.2(b)(1)(C). The gravamen of his position is that, in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015), the definition of a crime of violence in 18 U.S.C. § 16(b) is

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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unconstitutionally vague on its face. Therefore, he contends, his Texas conviction of evading arrest with a motor vehicle does not qualify as a crime of violence under § 16(b) and thus is not an aggravated felony for purposes of 8 U.S.C. § 1101(a)(43)(F) and § 2L1.2(b)(1)(C).

As Rodriguez concedes, his argument is foreclosed by *United States v. Gonzalez-Longoria*, 831 F.3d 670, 672-77 (5th Cir. 2016) (en banc), *petition for cert. filed* (Sept. 29, 2016) (No. 16-6259), in which we rejected a constitutional challenge to § 16(b) as facially vague.

Accordingly, Rodriguez's unopposed motion for summary disposition is GRANTED, and the district court's judgment is AFFIRMED. Rodriguez's alternative motion to hold his appeal in abeyance pending decisions by the Supreme Court in *Gonzalez-Longoria* and *Sessions v. Dimaya*, 137 S. Ct. 31 (2016) is DENIED. *See Wicker v. McCotter*, 798 F.2d 155, 157-58 (5th Cir. 1986).