

United States Court of Appeals
for the Fifth Circuit

No. 23-50335
CONSOLIDATED WITH
No. 23-50347
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 1, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELIAS MARCELINO BATEN-SARAT,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:22-CR-805-1, 4:22-CR-801-1

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Elias Marcelino Baten-Sarat appeals his conviction and sentence under 8 U.S.C. § 1326 for illegal entry into the United States after removal. He also appeals the revocation of a previously imposed term of supervised release. He argues for the first time on appeal that § 1326(b) is

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

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unconstitutional. Baten-Sarat has filed an unopposed motion for summary disposition acknowledging that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and explaining that 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, Baten-Sarat 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).

Baten-Sarat's motion is GRANTED, and the district court's judgments are AFFIRMED.