

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

Case No. 14-20005-01-JTM

LIONCIO BORJAS-MADRID,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the Motion to Vacate Sentence of defendant Lioncio Borjas-Madrid, who was convicted of possession of a firearm by an illegal alien, in violation 18 U.S.C. §§ 922(g)(5) and 924(a)(2), and sentenced to 46 months imprisonment. (Dkt. 58). Appearing *pro se*, Borjas-Madrid argues in his 28 U.S.C. § 2255 motion that his sentence was erroneously enhanced in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015), and that his total term of imprisonment should be reduced to 37 months.

The court hereby denies the defendant's motion. *Johnson* held that the "residual clause" of the Armed Career Criminal Act, 18 U.S.C. § 924(e), was unconstitutionally vague. However, Borjas-Madrid was not sentenced as a career criminal under the ACCA, and was not sentenced as a career offender under U.S.S.G. § 4B1.1. *See* Dkt. 49, ¶ 43, 75 (assigning defendant a total criminal history score of zero, and a criminal history category

of level I). Accordingly, *Johnson* provides no basis for altering the sentenced imposed.

IT IS ACCORDINGLY ORDERED this 2nd day of November, 2016 that the defendant's Motion to Vacate (Dkt. 68) is hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE