

United States Court of Appeals for the Fifth Circuit

No. 22-50880
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 27, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE CARDENAS-GOMEZ,

Defendant—Appellant,

CONSOLIDATED WITH

No. 22-50881

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE LUIS CARDENAS-GOMEZ,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:22-CR-180-1, 4:22-CR-240-1

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges*.

PER CURIAM: *

Jose Cardenas-Gomez appeals his conviction and sentence for illegal reentry after removal under 8 U.S.C. § 1326(a) and (b)(2), as well as the judgment revoking a term of supervised release he was serving for a prior offense. He has not briefed, and has thus abandoned, any challenge to the revocation of supervised release or to his revocation sentence. *See United States v. Reagan*, 596 F.3d 251, 254-55 (5th Cir. 2010). In his sole issue on appeal, Cardenas-Gomez contends that § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He has filed an unopposed motion for summary disposition and a letter brief explaining that he has raised this issue only to preserve it for further review and conceding correctly that this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Cardenas-Gomez's motion is GRANTED, and the district court's judgments are AFFIRMED.

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