

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 25, 2020

Lyle W. Cayce
Clerk

No. 20-50109
CONSOLIDATED WITH
No. 20-50115
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARCO ANTONIO LOPEZ-SANCHEZ,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:19-CR-619-1
USDC No. 4:17-CR-157-1

Before HAYNES, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

Marco Antonio Lopez-Sanchez appeals the 21-month prison sentence and three-year term of supervised release imposed following his guilty plea

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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conviction for being found unlawfully in the United States following removal and the revocation of his supervised release. He argues that the recidivism enhancement under 8 U.S.C. § 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. Lopez-Sanchez correctly concedes that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he raises the issue to preserve it for further possible review. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). The Government has filed an unopposed motion for summary affirmance based on *Almendarez-Torres* and, alternatively, seeks an extension of time to file a brief.

Because Lopez-Sanchez's sole issue on appeal is foreclosed, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Lopez-Sanchez has abandoned a challenge to the revocation of his supervised release by failing to brief an argument as to the revocation. See *United States v. Reagan*, 596 F.3d 251, 254-55 (5th Cir. 2010).

The Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgments of the district court are AFFIRMED.