

United States Court of Appeals  
for the Fifth Circuit

---

No. 22-50624  
Summary Calendar

---

United States Court of Appeals  
Fifth Circuit

**FILED**

February 6, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

MARIO RODOLFO CHAIREZ-AVILA,

*Defendant—Appellant,*

CONSOLIDATED WITH

---

No. 22-50629

---

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

MARIO CHAIREZ-AVILA,

*Defendant—Appellant.*

No. 22-50624  
c/w No. 22-50629

---

Appeals from the United States District Court  
for the Western District of Texas  
USDC Nos. 4:19-CR-31-1, 4:22-CR-87-1

---

Before STEWART, DENNIS, and WILLETT, *Circuit Judges*.

PER CURIAM:\*

Mario Rodolfo Chairez-Avila appeals his conviction and sentence for illegal reentry into the United States under 8 U.S.C. § 1326(a) and (b)(2), as well as the judgment revoking his term of supervised release for a prior offense. The latter challenge is unbriefed and thus abandoned. *See United States v. Reagan*, 596 F.3d 251, 254-55 (5th Cir. 2010).

For the first time on appeal, Chairez-Avila contends that the recidivism enhancement in § 1326(b) is unconstitutional because it permits a sentence above the otherwise applicable statutory maximum established by § 1326(a) based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. Although Chairez-Avila acknowledges that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), he nevertheless seeks to preserve it for possible Supreme Court review and has filed an unopposed motion for summary disposition.

Because Chairez-Avila is correct that his argument is foreclosed, *see United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019), summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, Chairez-Avila'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.