

United States Court of Appeals
for the Fifth Circuit

No. 22-50627
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
December 20, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TRINIDAD RODRIGUEZ-GIL,

Defendant—Appellant,

CONSOLIDATED WITH

No. 22-50628

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TRINIDAD RODRIGUEZ-GILL,

Defendant—Appellant.

No. 22-50627 c/w

No. 22-50628

Appeal from the United States District Court
for the Western District of Texas
USDC Nos. 4:22-CR-95-1, 4:19-CR-336-3

Before STEWART, DUNCAN, and WILSON, *Circuit Judges*.

PER CURIAM: *

Trinidad Rodriguez-Gil appeals his conviction and sentence for illegal reentry after removal, as well as the judgment revoking his term of supervised release for a prior offense. He has not briefed, and has therefore abandoned, any challenge to the revocation of supervised release or his revocation sentence. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

For the first time on appeal, Rodriguez-Gil argues that his sentence exceeds the statutory maximum and is therefore unconstitutional because the district court enhanced his sentence under 8 U.S.C. § 1326(b) based on facts that were neither alleged in the indictment nor found by a jury beyond a reasonable doubt. While he acknowledges 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. In addition, Rodriguez-Gil has filed an unopposed motion for summary disposition.

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, Rodriguez-Gil 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).

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

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Rodriguez-Gil's motion for summary disposition is GRANTED, and the district court's judgments are AFFIRMED.