

United States Court of Appeals for the Fifth Circuit

No. 22-50789
CONSOLIDATED WITH
No. 22-50816
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 30, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MANUEL RAMON MACIAS-RAMIREZ,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:22-CR-217-1, 4:22-CR-530-1

Before DAVIS, SMITH, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Manuel Ramon Macias-Ramirez appeals his conviction and sentence for illegal reentry into the United States under 8 U.S.C. § 1326(a) and (b)(1). He also appeals the district court's order revoking the term of supervised release he was serving at the time of the offense. Because his appellate brief

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

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does not address the revocation or revocation sentence, he has abandoned any challenge to that order. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

For the first time on appeal, Macias-Ramirez argues that his sentence exceeds the statutory maximum and is therefore unconstitutional because the district court enhanced his sentence under § 1326(b) based on the fact of a prior conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. He raises the issue to preserve it for further review and has filed an unopposed motion for summary disposition, correctly conceding that the 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 his argument is foreclosed, summary disposition is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, Macias-Ramirez's motion for summary disposition is GRANTED, and the district court's judgments are AFFIRMED.