

United States Court of Appeals for the Fifth Circuit

No. 23-50339
CONSOLIDATED WITH
No. 23-50365
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 4, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARGARITO CRUZ-RAMIREZ,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 2:21-CR-1116-1, 2:21-CR-635-1

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Margarito Cruz-Ramirez appeals his conviction and sentence for illegal reentry after removal, as well as the order revoking the term of supervised release he was serving at the time of the offense. Regarding the illegal reentry offense, he argues that 8 U.S.C. § 1326(b) is unconstitutional

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

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because it allows 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. Because Cruz-Ramirez does not address the revocation or the revocation sentence, he has abandoned any challenge to them. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

Cruz-Ramirez has filed an unopposed motion for summary disposition and a letter brief correctly conceding that the only issue he raises 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). He explains that he has raised the issue to preserve it for possible further review. Accordingly, because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Cruz-Ramirez's motion is GRANTED, and the district court's judgments are AFFIRMED.