

United States Court of Appeals  
for the Fifth Circuit

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No. 22-50708  
CONSOLIDATED WITH  
No. 22-50710

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 27, 2023

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOSE CARLOS GALLEGOS-HERNANDEZ,

*Defendant—Appellant.*

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Appeals from the United States District Court  
for the Western District of Texas  
USDC Nos. 4:22-CR-148-1, 7:13-CR-324-1

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Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:\*

Jose Carlos Gallegos-Hernandez appeals his conviction and sentence for illegal reentry after removal under 8 U.S.C. §§ 1326(a) and (b)(2), along with the revocation of supervised release he was serving at the time of the offense. He has not briefed, and has therefore abandoned, any challenge to

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

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the supervised release revocation and sentence. *See United States v. Reagan*, 596 F.3d 251, 254-55 (5th Cir. 2010).

Gallegos-Hernandez argues that § 1326(b) is unconstitutional because it permits a defendant to be sentenced above the statutory maximum under § 1326(a) 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 has filed an unopposed motion for summary disposition and a letter brief correctly conceding that this 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). Gallegos-Hernandez states that he has raised the issue only to preserve it for possible further review. Because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Gallegos-Hernandez's motion is GRANTED, and the district court's judgments are AFFIRMED.