

United States Court of Appeals
for the Fifth Circuit

No. 22-50988
CONSOLIDATED WITH
No. 22-50993

United States Court of Appeals
Fifth Circuit

FILED

May 5, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GILBERTO BETERO-CARRILLO,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:22-CR-434-1, 4:19-CR-872-2

Before JONES, HAYNES, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Gilberto Betero-Carrillo 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).

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

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On appeal, Betero-Carrillo 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 Betero-Carrillo 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 Betero-Carrillo 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, Betero-Carrillo’s motion is GRANTED, and the district court’s judgments are AFFIRMED.