United States Court of Appeals for the Fifth Circuit

No. 22-50991
consolidated with
No. 22-51010

United States of America,

Plaintiff—Appellee,

versus

Rodolfo Hernandez Roman,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC Nos. 4:22-CR-528-1,
4:22-CR-242-1

Before Davis, Smith, and Douglas, *Circuit Judges*.

Per Curiam:[*]

Rodolfo Hernandez Roman appeals his sentence for illegal reentry after removal, as well as the judgment revoking his term of supervised release for committing the new offense. He has not briefed, and has therefore abandoned, any challenge to the revocation of supervised release or his

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[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

revocation sentence. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

For the first time on appeal, Hernandez Roman 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. Accordingly, Hernandez Roman 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, Hernandez Roman 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).

Hernandez Roman's motion is GRANTED, and the district court's judgments are AFFIRMED.