

United States Court of Appeals
for the Fifth Circuit

No. 23-50083
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 17, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ADOLPH GAMEZ, JR.,

Defendant—Appellant,

CONSOLIDATED WITH

No. 23-50084

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LEONEL FAJARDO-RUIZ,

Defendant—Appellant.

No. 23-50083
c/w No. 23-50084

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:22-CR-667-1, 4:22-CR-650-1

Before HIGGINBOTHAM, STEWART, and SOUTHWICK, *Circuit Judges*.

PER CURIAM:*

Leonel Fajardo-Ruiz¹ appeals his conviction and sentence for illegal reentry after removal under 8 U.S.C. § 1326(a) and (b)(2), as well as the order revoking a term of supervised release he was serving for a prior offense. He has not briefed, and has thus waived, any challenge to the revocation of supervised release or to his revocation sentence. *See United States v. Reagan*, 596 F.3d 251, 254–55 (5th Cir. 2010). In his sole issue on appeal, Fajardo-Ruiz contends that Section 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. He has filed an unopposed motion for summary disposition and a letter brief explaining that he has raised this issue only to preserve it for further review and conceding correctly 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). Because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Fajardo-Ruiz’s motion is GRANTED, and the district court’s judgments are AFFIRMED.

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

¹ Although No. 23-50083 lists the Appellant’s name as Adolph Gamez, Jr., his counsel and the presentence report indicate that his true name is Leonel Fajardo-Ruiz.