

United States Court of Appeals
for the Fifth Circuit

No. 23-50580
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 1, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MIGUEL CABRERA-OLVERA,

Defendant—Appellant,

CONSOLIDATED WITH

No. 23-50592
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MIGUEL ANGEL CABRERA-OLVERA

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 2:22-CR-2988-1,
2:22-CR-2439-1

Before JONES, SMITH, and DENNIS, *Circuit Judges*.

PER CURIAM:*

Miguel Angel Cabrera-Olvera appeals his conviction and sentence for illegal reentry into the United States under 8 U.S.C. § 1326(a) and (b)(1), as well as the revocation of his term of supervised release related to a prior illegal reentry conviction. Cabrera-Olvera does not raise any issues in connection with the revocation of his term of supervised release. Rather, he argues for the first time on appeal 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 Cabrera-Olvera 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, and he has filed an unopposed motion for summary disposition.

This court has held that 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, Cabrera-Olvera 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).

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

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Cabrera-Olvera's motion is GRANTED, and the judgments are AFFIRMED.