

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 30, 2021

Lyle W. Cayce
Clerk

No. 21-50115
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FERNANDO BAYLON-CARRILLO,

Defendant—Appellant,

CONSOLIDATED WITH

No. 21-50116

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FERNANDO BAILON-CARRILLO,

Defendant—Appellant.

No. 21-50115 c/w

No. 21-50116

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:20-CR-426-1
USDC No. 4:16-CR-531-1

Before WIENER, DENNIS, and HAYNES, *Circuit Judges*.

PER CURIAM:*

Fernando Baylon-Carrillo appeals the sentence imposed following his guilty plea conviction to entry after deportation under 8 U.S.C. § 1326(a) and (b)(2), along with the revocation of the term of supervised release he was serving at the time of the offense. Because his appellate brief does not address the validity of the revocation or the revocation sentence, he abandons any challenge to them. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

On appeal, Baylon-Carrillo argues the sentencing enhancement scheme of § 1326(b) is unconstitutional in view of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013). The Government has filed a motion for summary affirmance or, in the alternative, an extension of time to file a brief. As Baylon-Carrillo concedes, his argument 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), *cert. denied*, 2021 WL 2519078 (U.S. June 21, 2021) (No. 19-7113). Accordingly, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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The Government's motion for summary affirmance is GRANTED, and the district court's judgment is AFFIRMED. The Government's alternative motion for an extension of time to file its brief is DENIED as unnecessary.