

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

May 24, 2022

Lyle W. Cayce
Clerk

No. 21-51133
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EREBY LUJAN-MADRID,

Defendant—Appellant,

CONSOLIDATED WITH

No. 21-51134

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ERBEY LUJAN-MADRID,

Defendant—Appellant.

No. 21-51133
c/w No. 21-51134

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-544-1
USDC No. 4:13-CR-379-3

Before SMITH, STEWART, and GRAVES, *Circuit Judges*.

PER CURIAM:*

Ereby Lujan-Madrid appeals his conviction and sentence for illegal reentry in violation of 8 U.S.C. § 1326(a) and (b), along with the revocation of a term of supervised release he was serving at the time of the offense. He has not briefed, and has therefore abandoned, any challenge to the revocation of supervised release or his revocation sentence. *See United States v. Reagan*, 596 F.3d 251, 254-55 (5th Cir. 2010).

For the first time on appeal, Lujan-Madrid contends that § 1326(b) is unconstitutional because it allows for 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 raises this issue only to preserve it for further review and conceding correctly that it 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), the motion is GRANTED, and the district court's judgments are AFFIRMED.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.