

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 29, 2022

Lyle W. Cayce
Clerk

No. 22-50079
CONSOLIDATED WITH
No. 22-50080
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ALBERTO MENDOZA-ESPINOZA,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:21-CR-728-1, 4:21-CR-1018-1

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:*

Alberto Mendoza-Espinoza appeals his conviction and sentence for illegal reentry in violation of 8 U.S.C. § 1326(a) and (b)(2) and the judgment

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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revoking his term of supervised release for a prior 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).

Mendoza-Espinoza contends that the enhancement of his illegal-reentry sentence pursuant to § 1326(b) is unconstitutional because the fact of a prior conviction was not charged and proved 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 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), Mendoza-Espinoza's motion is GRANTED, and the judgments of the district court are AFFIRMED.