

United States Court of Appeals
for the Fifth Circuit

No. 22-50384
CONSOLIDATED WITH
No. 22-50402
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 9, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MIGUEL ORTIZ-CASTILLO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-674-1
USDC No. 4:21-CR-744-1

Before WIENER, ELROD, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Miguel Ortiz-Castillo appeals his conviction and sentence for illegal reentry after removal, as well as the judgment revoking his term of supervised release for committing a new offense. He has not briefed, and has therefore

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

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abandoned, any challenge to the revocation of supervised release or his revocation sentence. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

For the first time on appeal, Ortiz-Castillo argues that his sentence exceeds the statutory maximum and is therefore unconstitutional because the district court enhanced his sentence under 8 U.S.C. § 1326(b) based on facts that were neither alleged in the indictment nor found by a jury beyond a reasonable doubt. While he acknowledges that 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. In addition, Ortiz-Castillo has filed an unopposed motion for summary disposition.

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, Ortiz-Castillo 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).

Ortiz-Castillo's motion is GRANTED, and the district court's judgments are AFFIRMED.