

United States Court of Appeals
for the Fifth Circuit

No. 22-50981
CONSOLIDATED WITH
No. 22-51000
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 11, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GABRIEL GONZALEZ PEREZ,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:22-CR-516-1, 4:22-CR-612-1

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

PER CURIAM:*

Gabriel Gonzalez Perez appeals his conviction and sentence for illegal reentry into the United States under 8 U.S.C. § 1326(a) and (b)(2), as well as the judgment revoking his term of supervised release for a prior offense. The

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

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latter challenge is unbriefed and thus abandoned. *See United States v. Reagan*, 596 F.3d 251, 254-55 (5th Cir. 2010) (citations omitted).

On appeal, Perez contends 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 Perez 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 and has filed an unopposed motion for summary affirmance.

Because Perez is correct that his argument is foreclosed, *see United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019), summary disposition is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, Perez's motion is GRANTED, and the district court's judgments are AFFIRMED.