

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

April 6, 2021

Lyle W. Cayce  
Clerk

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No. 20-50764  
CONSOLIDATED WITH  
No. 20-50777  
Summary Calendar

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ARTURO SOTO-RUEDA,

*Defendant—Appellant.*

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Appeals from the United States District Court  
for the Western District of Texas  
USDC No. 4:20-CR-197-1  
USDC No. 4:20-CR-237-1

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Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:\*

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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c/w No. 20-50777

Arturo Soto-Rueda appeals the within-guidelines sentence of 24 months of imprisonment and three years of supervised release imposed following his guilty plea conviction for illegal reentry after removal from the United States, in violation of 8 U.S.C. § 1326. He also appeals the concomitant revocation of his supervised release related to his prior conviction for illegal reentry.

Raising one issue on appeal, Soto-Rueda argues that he is entitled to resentencing for his new illegal reentry conviction because the sentencing enhancement provisions set forth under § 1326(b) are unconstitutional. He concedes that this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 226-27, 229-35 (1998), and he seeks to preserve the issue for further review. The Government filed an unopposed motion for summary affirmance agreeing that the issue is foreclosed and, in the alternative, a motion for an extension of time to file a brief.

As the Government argues, and Soto-Rueda agrees, the sole issue raised on appeal is foreclosed by *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). Because the issue is foreclosed, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Although the appeals of Soto-Rueda's illegal reentry conviction and supervised release revocation were consolidated, he does not address the revocation in his appellate brief. Consequently, he has abandoned any challenge he could have raised to the revocation or revocation sentence. See *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgments of the district court are AFFIRMED.

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The Government's alternative motion for an extension of time to file a brief is DENIED.