

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

February 23, 2022

Lyle W. Cayce
Clerk

No. 21-50733
CONSOLIDATED WITH
No. 21-50755
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EMETERIO MATA-TARANGO,

Defendant—Appellant.

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-190-1
USDC No. 4:18-CR-850-1

Before DAVIS, JONES, and ELROD, *Circuit Judges.*

PER CURIAM:*

Emeterio Mata-Tarango appeals his conviction and sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326(a) and (b)(2),

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-50733
c/w No. 21-50755

along with the revocation of a term of supervised release he was serving at the time of the offense. He has not briefed the validity of the revocation of his supervised release or his revocation sentence and has, therefore, abandoned any challenge to them. *See United States v. Reagan*, 596 F.3d 251, 254-55 (5th Cir. 2010).

For the first time on appeal, Mata-Tarango contends that it violates the Constitution to treat a prior conviction that increases the statutory maximum under § 1326(b) as a sentencing factor, rather than as an element of the offense. He concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve it for further review. Agreeing that the issue is foreclosed, the Government moves without opposition for summary affirmance, or, alternatively, for an extension of time to file its brief.

The parties are correct that Mata-Tarango's assertion is foreclosed by *Almendarez-Torres*. *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Accordingly, the motion for summary affirmance is GRANTED, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgments of the district court are AFFIRMED.