

United States Court of Appeals for the Fifth Circuit

No. 22-50731
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 9, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

VICTOR MANUEL PALMA,

Defendant—Appellant,

CONSOLIDATED WITH

No. 22-50735

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

VICTOR MANUEL BARRIENTOS-PALMA,

Defendant—Appellant.

No. 22-50731
c/w No. 22-50735

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:22-CR-130-1, 4:22-CR-525-1

Before STEWART, DUNCAN, and WILSON, *Circuit Judges*.

PER CURIAM: *

Victor Manuel Palma appeals his sentence for illegal reentry into the United States after having been removed, in violation of 8 U.S.C. § 1326(a) and (b)(1), along with the revocation of the supervised release that he was serving at the time of the offense. He contends that § 1326(b) is unconstitutional because it allows a sentence above the otherwise applicable statutory maximum based on facts that are neither alleged in the indictment nor found by a jury beyond a reasonable doubt. Because Palma does not address the validity of the revocation of his terms of supervised release or the sentence imposed upon revocation, he has abandoned any challenge to that judgment. *See Yohey v. Collins*, 985 F.2d 222, 224–25 (5th Cir. 1993).

Palma moves for summary disposition, correctly conceding that his challenge to § 1326(b) is foreclosed by the Supreme Court’s decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and explaining that he merely seeks to preserve the issue for further review. *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), Palma’s motion is GRANTED, and the judgments of the district court are AFFIRMED.

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