

United States Court of Appeals for the Fifth Circuit

No. 23-10293
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RICARDO FORTINO MARTINEZ-MUNOZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-296-1

Before HIGGINBOTHAM, STEWART, and SOUTHWICK, *Circuit Judges.*

PER CURIAM: *

Ricardo Fortino Martinez-Munoz appeals the sentence imposed following his conviction under 8 U.S.C. § 1326(a) and (b)(1) for illegal reentry after deportation. Martinez-Munoz argues that his sentence exceeds the statutory maximum and is thus unconstitutional because the district court applied the § 1326(b) enhancement based on the fact of a prior conviction

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

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that was neither alleged in the indictment nor admitted by him at rearraignment. He correctly concedes that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and he raises this issue to preserve it for further review. *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). The Government moves, without opposition, for summary affirmance, or, alternatively, for an extension of time to file a brief.

Because summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the motion for summary affirmance is GRANTED, and the alternative motion for an extension of time to file a brief is DENIED. The judgment is AFFIRMED.