

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

August 9, 2019

Lyle W. Cayce  
Clerk

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No. 19-10015  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROBERTO CARLOS MARTINEZ-MENDOZA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:18-CR-186-1

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Before JONES, CLEMENT, and OLDHAM, Circuit Judges.

PER CURIAM:\*

Roberto Carlos Martinez-Mendoza appeals his guilty plea conviction and sentence of 30 months of imprisonment for being found unlawfully present in the United States after deportation. Martinez-Mendoza contends that his guilty plea was not knowing and voluntary and that his sentence is unconstitutional because it exceeds the maximum sentence for the 18 U.S.C. § 1326(a) offense charged in the indictment. He argues his guilty plea was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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invalid because he was not admonished that to trigger a sentencing enhancement under § 1326(b)(1), the fact of a prior conviction must be proved to a jury beyond a reasonable doubt. He correctly concedes, however, that his arguments are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Pineda-Arrellano*, 492 F.3d 624, 625-26 (5th Cir. 2007). Thus, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.