

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 15, 2020

Lyle W. Cayce
Clerk

No. 20-50220
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FRANCISCO MARTINEZ-CASTILLO,

Defendant—Appellant,

CONSOLIDATED WITH

No. 20-50230

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

FRANCISCO MARTINEZ-CASTILLO, *also known as* FRANCISCO
CASTILLO-MARTINEZ,

Defendant—Appellant.

No. 20-50220
c/w No. 20-50230

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:17-CR-181-1
USDC No. 4:19-CR-809-1

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

PER CURIAM:*

Francisco Martinez-Castillo appeals his sentence of sixteen months of imprisonment and three years of supervised release, which the district court imposed following his guilty plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326. He argues that the enhancement of his sentence under § 1326(b)(2) based on his prior conviction, which increased the statutory maximum terms of imprisonment and supervised release, is unconstitutional because his prior conviction is treated as a sentencing factor rather than an element of the offense that must be alleged in the indictment and found by a jury beyond a reasonable doubt. Martinez-Castillo concedes that the issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the issue for further review. The Government moves for summary affirmance, urging that Martinez-Castillo's argument is foreclosed.

The parties are correct that Martinez-Castillo's argument is foreclosed by *Almendarez-Torres*. See *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *United States v. Rojas-Luna*, 522 F.3d 502, 505-06 (5th Cir. 2008). Accordingly, the Government's 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 judgment of the district court is AFFIRMED.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.