

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 15, 2020

Lyle W. Cayce
Clerk

No. 20-50377
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

HECTOR MIGUEL MARTINEZ-CARRILLO, *also known as* HECTOR
MIGUE MARTINEZ-CARRILLO, *also known as* HECTOR MIGUEL
MARTINEZ-C, *also known as* HECTOR MIGUEL CARRILLO-
MARTINEZ,

Defendant—Appellant,

CONSOLIDATED WITH

No. 20-50379
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

HECTOR MIGUEL MARTINEZ-CARRILLO,

Defendant—Appellant.

No. 20-50377
c/w No. 20-50379

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:19-CR-900-1
USDC No. 4:20-CR-73-1

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

PER CURIAM:*

Hector Miguel Martinez-Carrillo appeals his sentence of 16 months 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 also appeals from the judgment revoking his supervised release. He argues that the enhancement of his sentence based on his prior conviction pursuant to § 1326(b)(1), 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. He 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, asserting that Martinez-Carrillo's argument is foreclosed.

The parties are correct that Martinez-Carrillo's assertion 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). Further, Martinez-Carrillo has abandoned a challenge to the revocation of his supervised release by failing to brief an argument as to the revocation. See

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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United States v. Reagan, 596 F.3d 251, 254-55 (5th Cir. 2010). Accordingly, 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.