

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals

Fifth Circuit

**FILED**

February 24, 2006

Charles R. Fulbruge III  
Clerk

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No. 05-50767  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODOLFO MARTINEZ VALDEZ, also known as  
Mario Estrada, also known as Hector A.  
Martinez, also known as Flabiano Ortiz-Valdez,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:04-CR-2169-ALL  
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Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Rodolfo Martinez Valdez raises arguments that are foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that a prior conviction is a sentencing factor under 8 U.S.C. § 1326(b)(2) and not a separate criminal offense. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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