

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

United States Court of Appeals
Fifth Circuit

FILED

November 19, 2012

Lyle W. Cayce
Clerk

No. 11-51117

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS MARTINEZ-ALVAREZ, also known as Jesus Alvarez, also known as Jesus Martinez, Jr.,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:11-CR-1612-1

Before WIENER, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:*

Jesus Martinez-Alvarez appeals the 77-month sentence imposed in connection with his guilty plea conviction for illegal reentry. He makes no argument regarding his concurrent 36-month sentence for falsely claiming to be a United States citizen.

Arguing that his sentence is unreasonable because it is greater than necessary to meet the sentencing goals of 18 U.S.C. § 3553(a), Martinez-Alvarez

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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contends that the guidelines range did not adequately reflect his cultural assimilation; his familial reason for reentering the country; the poor quality of life he will live in Mexico; his ineligibility, as an alien, for certain prison programs; and his inability to participate in a fast track program.

Martinez-Alvarez's sentence is within the properly calculated guidelines range and is presumptively reasonable. *See United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006); *see also United States v. Duarte*, 569 F.3d 528, 529-31 (5th Cir. 2009) (rejecting the notion that this court should examine the empirical basis behind each Guideline before applying the presumption of reasonableness). As Martinez-Alvarez concedes, his argument that the presumption should not apply is foreclosed. *See Duarte*, 659 F.3d at 529-31. Martinez-Alvarez has not rebutted the presumption that his within-guidelines sentence is reasonable. *See United States v. Gomez-Herrera*, 523 F.3d 554, 565-66 (5th Cir. 2008). The district court did not abuse its discretion in sentencing Martinez-Alvarez.

AFFIRMED.