

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

United States Court of Appeals
Fifth Circuit

FILED

October 29, 2012

Lyle W. Cayce
Clerk

No. 12-40031
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIA DEL CARMEN MARTINEZ-FRAGA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:11-CR-01156-4

Before STEWART, Chief Judge, and OWEN and GRAVES, Circuit Judges.

PER CURIAM:*

Maria Del Carmen Martinez-Fraga (Martinez) pleaded guilty to conspiring to harbor illegal aliens in violation of 8 U.S.C. § 1324 and was sentenced within the Guidelines to 97 months of imprisonment. She appeals her sentence, arguing that the district court erred when it enhanced her sentence under U.S.S.G. § 2L1.1(b)(7)(D) based on the deaths of two aliens.

The sentencing court made exhaustive factual findings in support of its determination that the deaths were reasonably foreseeable. Specifically, the

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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court found that all members of the conspiracy knew that the aliens were to be trekked on foot through the brush in the middle of summer. The trip was intended to take two or three days, which in itself presented danger, but it was foreseeable that they could be stranded in the brush for a longer period. Because the aliens were required to travel through the brush in “extremely hot” weather without sufficient food or water, the court further found it reasonably foreseeable that members of the party might go in search of help, find a rural road and collapse out of exhaustion, and be struck and killed by a motorist who did not see them.

These findings are plausible in light of the record as a whole, and they certainly do not give rise to a “firm and definite conviction” that the sentencing court was mistaken. *See United States v. Rodriguez*, 630 F.3d 377, 380 (5th Cir. 2011); *United States v. De Jesus-Ojeda*, 515 F.3d 434, 442 (5th Cir. 2008).

AFFIRMED.