

United States Court of Appeals for the Fifth Circuit

No. 23-10991
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 21, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ENRIQUE MARTINEZ-FLORES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CR-83-1

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Enrique Martinez-Flores appeals his sentence of 36 months of imprisonment and three years of supervised release following his guilty-plea conviction of illegal reentry after deportation in violation of 8 U.S.C. § 1326. He contends that the district court erred in imposing more than two years in prison and more than one year of supervised release without an indictment

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 23-10991

alleging, or any jury finding beyond a reasonable doubt, that he had been convicted of a felony before the removal specified in the indictment.

As Martinez-Flores correctly concedes, this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Garza-De La Cruz*, 16 F.4th 1213, 1213–14 (5th Cir. 2021). He raises the issue to preserve it for Supreme Court review.

The government has moved, without opposition, for summary affirmance, or in the alternative, for an extension of time to file a brief on the merits. Because the issue is foreclosed, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

The government's unopposed motion for summary affirmance is GRANTED, and the judgment of conviction and sentence is AFFIRMED. The government's alternative motion for an extension of time to file a brief is DENIED as moot.