

United States Court of Appeals for the Fifth Circuit

No. 24-10593
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 13, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

EVER MARTINEZ-ROMERO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CR-334-1

Before DENNIS, HO, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Ever Martinez-Romero appeals the sentence imposed following his guilty plea conviction for illegal reentry in violation of 8 U.S.C. § 1326. Martinez-Romero challenges the application of the enhanced penalty range in § 1326(b) as unconstitutional because it permits a defendant to be sentenced above the statutory maximum under § 1326(a) based on a prior

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

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conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. As he correctly concedes, this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019). He raises this issue to preserve it for further review. The Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time to file a brief.

Because summary affirmance is appropriate, *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government’s motion for summary affirmance is GRANTED, the Government’s alternative motion for an extension of time to file a brief is DENIED AS MOOT, and the district court’s judgment is AFFIRMED.