

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TOMAS MARTINEZ-RODRIGUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

APPENDIX A

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

No. 19-11248
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 18, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

TOMAS MARTINEZ-RODRIGUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-168-1

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

Tomas Martinez-Rodriguez pleaded guilty to illegal reentry by a deported alien. Because Martinez-Rodriguez's prior deportation followed his conviction for a felony, he was subject to an enhanced statutory maximum sentence of ten years and an enhanced statutory supervised release range of not more than three years. *See* 8 U.S.C § 1326(b)(1); 18 U.S.C. § 3583(b)(2). The district court sentenced him within the guidelines range to ten months of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

imprisonment, followed by two years of supervised release. Martinez-Rodriguez was released from custody in March of 2020 but remains on supervised release. *See United States v. Lares-Meraz*, 452 F.3d 352, 355 (5th Cir. 2006).

In this appeal, Martinez-Rodriguez contends that the district court erred by sentencing him beyond the statutory maximum permitted by § 1326(a) based on the fact of a prior felony conviction that was neither pleaded in the indictment, admitted by him, or found by a jury beyond a reasonable doubt. He also argues that his guilty plea was invalid because he was not admonished that the prior-felony provision of § 1326(b)(1) could not be used to enhance his sentence unless his prior felony conviction was submitted to a jury and proved beyond a reasonable doubt. He concedes that these issues are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), but he seeks to preserve the issues for future review. The Government moves for summary affirmance or, alternatively, for an extension of time in which to file a merits brief.

The parties are correct that Martinez-Rodriguez's arguments are clearly foreclosed by *Almendarez-Torres*. *See United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007); *United States v. Wallace*, 759 F.3d 486, 497 (5th Cir. 2014); *see generally Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the motion for summary affirmance is GRANTED. The Government's alternative motion for an extension of time is DENIED. The judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

TOMAS MARTINEZ-RODRIGUEZ

Case Number: 4:19-CR-00168-O(01)

U.S. Marshal's No.: 94043-479

Michael Levi Thomas, Assistant U.S. Attorney

Michael Lehmann, Attorney for the Defendant

On July 3, 2019 the defendant, TOMAS MARTINEZ-RODRIGUEZ, entered a plea of guilty as to Count One of the Indictment filed on May 22, 2019. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:


<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 U.S.C. § 1326 (a) and (b)(1)	Illegal Reentry After Deportation	10/11/2016	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on May 22, 2019.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed November 14, 2019.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed November 15, 2019.

Judgment in a Criminal Case
Defendant: TOMAS MARTINEZ-RODRIGUEZ
Case Number: 4:19-CR-00168-O(1)

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IMPRISONMENT

The defendant, TOMAS MARTINEZ-RODRIGUEZ, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **TEN (10) months** as to Count One of the Indictment filed on May 22, 2019.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **TWO (2) years** as to Count One of the Indictment filed on May 22, 2019.

As a condition of supervised release, upon the completion of the sentence of imprisonment, the defendant shall be surrendered to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 USC § 1101 et seq. As a further condition of supervised release, if ordered deported or removed, the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions contained in the Judgment and shall comply with the mandatory and special conditions stated herein:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;

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Defendant: TOMAS MARTINEZ-RODRIGUEZ
Case Number: 4:19-CR-00168-O(1)

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- (12) not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and,
- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry;

take notice that the mandatory drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse; and,

comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

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RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY _____
Deputy Marshal