

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

SELVIN OMAR CANALES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Kevin Joel Page

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Appendix A Opinion of Fifth Circuit, CA No. 22-10264, dated September 12, 2022,
United States v. Canales, 2022 WL 4127528 (5th Sept. 12, 2022)
(unpublished).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered March 10, 2022.
United States v. Canales, Dist. Court 4:21-CR-00280-Y-1.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 22-10264
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 12, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SELVIN OMAR CANALES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:21-CR-280-1

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:*

Selvin Omar Canales pled guilty to illegal reentry after deportation and was sentenced within the guidelines range to 46 months in prison and three years of supervised release. He asserts that he was not informed that the statutory enhancement provision in 8 U.S.C. § 1326(b)(2) was an

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 22-10264

essential element of the offense to which he was pleading guilty, rendering his guilty plea unknowing and involuntary. He also alleges that the statutory enhancement provision in § 1326(b) and any prison term in excess of the maximum allowed under § 1326(a) are unconstitutional. Canales concedes that his arguments concerning § 1326(b) are foreclosed and indicates that he wishes to preserve them for further review. The Government has moved for summary affirmance or, alternatively, for an extension of time to file a brief.

The parties are correct that the issues raised on appeal are 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). Therefore, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, 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.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

SELVIN OMAR CANALES

Case Number: 4:21-CR-280-Y(1)

M. Levi Thomas assistant U.S. attorney
Andrea G. Aldana, attorney for the defendant

On October 27, 2021, the defendant, Selvin Omar Canales, entered a plea of guilty to count one of the one-count indictment. 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 CONCLUDED</u> | <u>COUNT</u> |
|-----------------------------------|-----------------------------------|---------------------------------|---------------------|
| 8 U.S.C. § 1326(a) and (b)(2) | Illegal Reentry After Deportation | September 6, 2021 | 1 |

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

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

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 March 8, 2022.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed March 10, 2022.

Judgment in a Criminal Case

Defendant: Selvin Omar Canales

Case Number: 4:21-CR-280-Y(1)

Judgment -- Page 2 of 3

IMPRISONMENT

The defendant, Selvin Omar Canales, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 46 months on count one of the one-count indictment. This sentence shall run consecutively to any future sentence that may be imposed in case no. 1703418 in the 396th Judicial District Court, Tarrant County, Texas, and case no. 4:21-CR-292-Y(1) in the United States District Court for the Northern District of Texas.

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 3 years on count one of the one-count indictment.

Under 18 U.S.C. § 3583(d), as a condition of supervised release upon the completion of the sentence of imprisonment, the defendant shall be surrendered by the Federal Bureau of Prisons to a duly authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* As a condition of supervised release, if ordered deported, 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 recommended by the U.S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

- not commit another federal, state, or local crime;
- not possess illegal controlled substances;
- not possess a firearm, destructive device, or other dangerous weapons;
- cooperate in the collection of DNA as directed by the probation officer, as authorized by the Justice for All Act of 2004;
- report in person to the probation office in the district to which the defendant is released from the 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;
- not illegally re-enter the United States, if deported, removed, or allowed voluntary departure; and
- refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

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.

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