

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICARDO FORTINO MARTINEZ-MUNOZ,

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/ Maria Gabriela Vega

JASON HAWKINS
Federal Public Defender
Northern District of Texas
TX State Bar No. 00759763
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886 Fax

MARIA GABRIELA VEGA **
Assistant Federal Public Defender
Northern District of Texas
TX State Bar No. 24084014
525 Griffin Street, Suite 629
Dallas, TX 75202
(214) 767-2746
(214) 767-2886

INDEX TO APPENDICES

Appendix A Opinion of Fifth Circuit, CA No. 23-10293,
United States v. Martinez-Munoz, 2023 WL 8540019 (5th Cir. Dec. 11, 2023)(unpublished).

Appendix B Judgment and Sentence of the United States District Court
for the Northern District of Texas, entered March 15, 2023.
United States v. Martinez-Munoz, Dist. Court 4:22-CR-296-Y.

Appendix C Indictment

Appendix D Factual Resume

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-10293
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
December 11, 2023

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff—Appellee,

versus

RICARDO FORTINO MARTINEZ-MUNOZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-296-1

Before HIGGINBOTHAM, STEWART, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Ricardo Fortino Martinez-Munoz appeals the sentence imposed following his conviction under 8 U.S.C. § 1326(a) and (b)(1) for illegal reentry after deportation. Martinez-Munoz argues that his sentence exceeds the statutory maximum and is thus unconstitutional because the district court applied the § 1326(b) enhancement based on the fact of a prior conviction

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

No. 23-10293

that was neither alleged in the indictment nor admitted by him at rearraignment. He correctly concedes that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), and he raises this issue to preserve it for further review. *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). The Government moves, without opposition, for summary affirmance, or, alternatively, for an extension of time to file a brief.

Because summary affirmance is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the motion for summary affirmance is GRANTED, and the alternative motion for an extension of time to file a brief 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.

Case Number: 4:22-CR-296-Y(1)

RICARDO FORTINO MARTINEZ-MUNOZ

M. Levi Thomas, assistant U.S. attorney

Michael A. Lehmann, attorney for the defendant

On November 16, 2022, the defendant, Ricardo Fortino Martinez-Munoz, 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)(1)	Illegal Reentry After Deportation	May 15, 2022	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 14, 2023.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed March 15, 2023.

b1

IMPRISONMENT

The defendant, Ricardo Fortino Martinez-Munoz, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 66 months on count one of the one-count indictment.

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; and
- not illegally re-enter the United States, if deported, removed, or allowed voluntary departure.

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

b3

APPENDIX C

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

2022 SEP 27 PM 2:27

DEPUTY CLERK

mb

UNITED STATES OF AMERICA

v.

RICARDO FORTINO MARTINEZ-
MUNOZ (01)

No.

4:22-cr-296-Y

INDICTMENT

The Grand Jury Charges:

Count One

Illegal Reentry After Deportation
(Violation of 8 U.S.C. § 1326(a) and (b)(1))

On or about May 15, 2022, in the Fort Worth Division of the Northern District of Texas, defendant **Ricardo Fortino Martinez-Munoz**, an alien, was found in the United States having previously been deported and removed from the United States on or about June 13, 2012, and the defendant had not received the consent of the Attorney General of the United States or the Secretary of the Department of Homeland Security, to reapply for admission to the United States.

In violation of 8 U.S.C. § 1326(a) and (b)(1).

A TRUE BILL.

Natalie Wells

FOREPERSON

CHAD E. MEACHAM
UNITED STATES ATTORNEY

M. T. Thomas

LEVI THOMAS
Assistant United States Attorney
Texas State Bar No. 24083963
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102
Telephone: 817-252-5200
Facsimile: 817-252-5455
Email: Levi.Thomas@usdoj.gov

c2

Indictment - Page 2 of 2

23-10293.8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

THE UNITED STATES OF AMERICA

v.

RICARDO FORTINO MARTINEZ-MUNOZ (01)

INDICTMENT

8 U.S.C. § 1326(a) and (b)(1)
Illegal Reentry After Deportation
Count 1

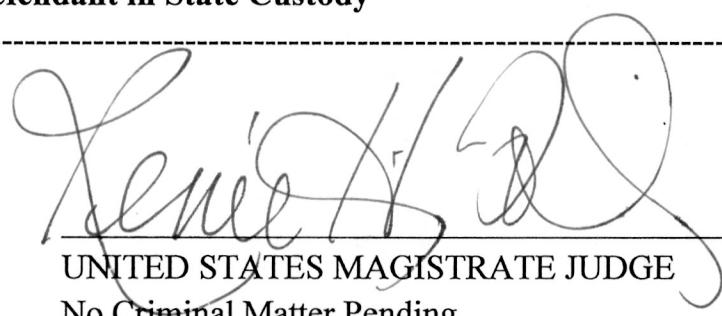
A true bill rendered

DALLAS


JKW
FOREPERSON

Filed in open court this 27th day of September, 2022.

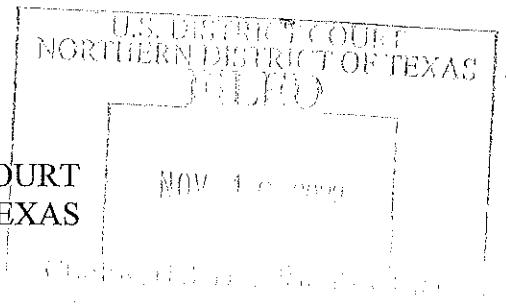
Warrant to Issue – Defendant in State Custody


UNITED STATES MAGISTRATE JUDGE
No Criminal Matter Pending

APPENDIX D

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



UNITED STATES OF AMERICA

v.

RICARDO FORTINO MARTINEZ-MUNOZ (01)

No. 4:22-CR-296-Y

FACTUAL RESUME

I. Plea:

Count One: Illegal Reentry after Deportation, in violation of 8 U.S.C. § 1326(a) & (b)(1).

II. Penalties:

The penalties the Court can impose include:

- a. a term of imprisonment of not more than ten (10) years;
- b. a fine of not more than \$250,000;
- c. a term of supervised release of not more than three (3) years. If the defendant violates the conditions of supervised release, he could be imprisoned for an additional term of imprisonment;
- d. a mandatory special assessment of \$100;
- e. costs of incarceration and supervision; and
- f. pleading guilty may have consequences with respect to the defendant's immigration status, including removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district court, can predict to a certainty the effect of his conviction on his status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his plea may entail, even if the consequences include his automatic removal from the United States.

III. Essential Elements of the Offense:

In order to establish the offense alleged in Count One, the government must prove the following elements beyond a reasonable doubt:

- First: That on or about the date alleged, the defendant was an alien;
- Second: That the defendant was previously removed from the United States;
- Third: That the defendant was found in the United States; and
- Fourth: That the defendant had not received the express consent of either the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission to the United States since the time of the defendant's previous removal.

IV. Stipulation of Facts:

Ricardo Fortino Martinez-Munoz (Martinez) is a citizen and national of Mexico, born in Monterrey, Nuevo Leon, Mexico. On June 13, 2012, **Martinez** was deported and removed to Mexico through Laredo, Texas. On May 15, 2022, **Martinez** was encountered by immigration authorities at the Arlington City Jail in Arlington, Texas, within the Federal Northern District of Texas. **Martinez** had re-entered the United States illegally, and he had not applied for nor received permission from the Attorney General of the United States or the Secretary of the Department of Homeland Security to reapply for admission to the United States at any time after being deported.

SIGNED on this the 31 day of October, 2022.

Ricardo F. Martinez
RICARDO FORTINO MARTINEZ-MUNOZ
Defendant

Michael Lehmann
MICHAEL LEHMANN
Attorney for Defendant