

August 17, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41728
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE NARVAEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:04-CR-597-ALL

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Jose Narvaez appeals his sentence under 8 U.S.C. § 1326(a) and (b) for illegal reentry into the United States after having been deported after conviction for an aggravated felony. Narvaez asserts for the first time on appeal that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b) are unconstitutional. The Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), controls this issue. We must follow Almendarez-Torres "unless

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and until the Supreme Court itself determines to overrule it.”

United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000)

(internal quotation and citation omitted). Thus, this issue is foreclosed.

The district court's judgment is AFFIRMED.