

August 17, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-51434  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRES FLORES-MARTINEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:04-CR-538-1  
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Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:\*

Andres Flores-Martinez ("Flores") appeals from his 30-month prison sentence, following his guilty-plea conviction of illegally reentering the United States, in violation of 8 U.S.C. § 1326(a) and (b). Flores raises arguments that are foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that a prior conviction is a sentencing factor under 8 U.S.C. § 1326(b)(2) and not a separate criminal offense. Flores also concedes that his unpreserved challenge to his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

sentence under United States v. Booker, 125 S. Ct. 738 (2005), is meritless, because he cannot show that his "substantial rights" were affected under the standard set forth in United States v. Mares, 402 F.3d 511, 520-21 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005) (No. 04-9517).

The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.