

FILED

August 21, 2007

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 06-40793
Conference Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

VICTOR JOSE TORRES-DOMINGUEZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:05-CR-1348-ALL

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Victor Jose Torres-Dominguez (Torres) appeals his conviction and sentence following his guilty plea to illegal reentry. He argues that the district court erred in determining that his 1991 New York conviction for attempted burglary was a "crime of violence" under U.S.S.G. § 2L1.2(b)(1)(A)(ii). This argument, however, was inadequately briefed and is therefore waived. See *United States Valles*, 484 F.3d 745, 758 (5th Cir. 2007).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Torres also challenges the constitutionality of 8 U.S.C. § 1326(b). His constitutional challenge is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998). Although Torres contends that *Almendarez-Torres* was incorrectly decided and that a majority of the Supreme Court would overrule *Almendarez-Torres* in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), we have repeatedly rejected such arguments on the basis that *Almendarez-Torres* remains binding. See *United States v. Garza-Lopez*, 410 F.3d 268, 276 (5th Cir. 2005); see also *Rangel-Reyes v. United States*, 126 S. Ct. 2873 (2006); *United States v. Pineda-Arrellano*, 2007 U.S. App. LEXIS 16925 (5th Cir. July 17, 2007). Torres properly concedes that his argument is foreclosed in light of *Almendarez-Torres* and circuit precedent, but he raises it here to preserve it for further review.

AFFIRMED.