

June 22, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-41510  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BENANCIO ALANIS-ZUNIGA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:04-CR-481-ALL  
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Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Benancio Alanis-Zuniga (Alanis-Zuniga) appeals his guilty plea conviction and sentence for illegal reentry following deportation in violation of 8 U.S.C. § 1326. The Government does not seek enforcement of Alanis-Zuniga's waiver of appeal; therefore, this court will not enforce it. See United States v. Rhodes, 253 F.3d 800, 804 (5th Cir. 2001).

For the first time on appeal, Alanis-Zuniga contends that the "felony" and "aggravated felony" provisions of 8 U.S.C.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 1326(b) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000) and Shepard v. United States, 125 S. Ct. 1254 (2005). However, as Alanis-Zuniga concedes, this argument is foreclosed. See Almendarez-Torres v. United States, 523 U.S. 224, 247 (1998); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

Accordingly, the district court's judgment is AFFIRMED.