

June 20, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41216
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS ORDONES-FERRUZCA, also known as Rafael Ornelas-Garcia,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:05-CR-309-ALL

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Jesus Ordones-Ferruzca (Ordones) appeals from his conviction of being illegally present in the United States after having been deported. He challenges the constitutionality of the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b), and he contends that his challenge is not barred by the appeal-waiver provision of his plea agreement. The Government seeks enforcement of the waiver provision. Because Ordones's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

substantive contention is foreclosed, we need not address whether to enforce the waiver provision.

The constitutional issue raised by Ordones is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Ordones 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.), cert. denied, 126 S. Ct. 298 (2005). Ordones 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.

The district court's judgment is AFFIRMED.