

June 20, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40105
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NICHOLAS MALDONADO-GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-642-ALL

Before JONES, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

Nicholas Maldonado-Garcia (Maldonado) appeals his guilty plea conviction and sentence for illegal reentry following deportation. Maldonado contends that the district court erred in treating his Texas burglary of a habitation conviction as a crime of violence under U.S.S.G. § 2L1.2(b)(1)(A)(ii). As Maldonado concedes, his argument has been rejected by this court. See United States v. Valdez-Maltos, 443 F.3d 910, 911 (5th Cir.), cert. denied, 127 S. Ct. 265 (2006); United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Garcia-Mendez, 420 F.3d 454, 456-57 (5th Cir. 2005),
cert. denied, 126 S. Ct. 1398 (2006).

Maldonado also challenges, in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than as elements of the offense that must be found by a jury. This issue is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Maldonado contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule Almendarez-Torres in light of Apprendi, 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). Maldonado 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.