

October 25, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-20915  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIO OLIVAS-AGUILAR, also known as Mario Olivas,  
also known as Mario Aguilar Olivas,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:05-CR-181-ALL  
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Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

Mario Olivas-Aguilar (Olivas) pleaded guilty to illegal reentry after deportation and was sentenced to 70 months of imprisonment.

Olivas's constitutional challenge to 8 U.S.C. § 1326(b) is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Olivas 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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). Olivas 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.