

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40381
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 28, 2007

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

GUADALUPE RANGEL-TREVINO

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:05-CR-2039-ALL

Before REAVLEY, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Having pleaded guilty to being an alien unlawfully found in the United States after deportation, in violation of 8 U.S.C. § 1326, Guadalupe Rangel-Trevino contends the district court erroneously construed his prior Texas conviction for aggravated assault as a crime of violence and incorrectly applied a sentence enhancement under Sentencing Guidelines § 2L1.2. In the light of our court's recent decision in *United States v. Guillen-Alvarez*, 489 F.3d 197, 199-201 (5th Cir. 2007), Rangel's assertion is unavailing.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Citing *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Rangel challenges the constitutionality of § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. Our court has held this issue "fully foreclosed from further debate". *United States v. Pineda-Arellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202).

AFFIRMED.