

**FILED**

February 18, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40900  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OMAR ALEJANDRO GARZA-FLORES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-03-CR-250-1  
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Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:\*

Omar Alejandro Garza-Flores contends for the first time on appeal that the felony and aggravated felony provisions found in 8 U.S.C. § 1326(b)(1) and (b)(2) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). He concedes that this argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but asserts that Almendarez-Torres has been called into doubt by Apprendi v. New Jersey, 530 U.S. 466 (2000). See United States v. Dabeit, 231 F.3d 979, 984 (5th

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Cir. 2000). He seeks to preserve the issue for possible Supreme Court review.

Garza contends also that a condition of supervised release contained in the written judgment, which prohibits Garza from possessing a dangerous weapon, conflicts with the district court's oral pronouncement of the sentence and must be deleted. The same contention was advanced in United States v. Torres-Aquilar, 352 F.3d 934, 935-38 (5th Cir. 2003), and was rejected by the court. The judgment is

AFFIRMED.