

February 15, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-11166
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAMIRO PACHECO, also known as Ramiro Pacheco, Jr.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:05-CR-84-ALL

Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:*

Ramiro Pacheco appeals his illegal reentry conviction and sentence. Pacheco'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 Pacheco 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,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

276 (5th Cir.), cert. denied, 126 S. Ct. 298 (2005). Pacheco 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.

Pacheco's argument that the sentencing disparities created by U.S.S.G. § 5K3.1's fast-track sentencing program rendered his sentence unreasonable is foreclosed by United States v. Aguirre-Villa, 460 F.3d 681, 682 (5th Cir.), pet. for cert. filed (Nov. 13, 2006) (06-7792). Finally, Pacheco has not established under plain error review that restricting the fast-track program to only certain geographic locations results in due process and equal protection violations.

AFFIRMED.