

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40193
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN CARLOS OVIEDO-MEDINA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-1615-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Juan Carlos Oviedo-Medina appeals his sentence under 8 U.S.C. § 1326 for illegal reentry into the United States after having been deported. Oviedo-Medina asserts that the district court erred in concluding that his prior state felony conviction for simple possession of cocaine was an "aggravated felony" for purposes of § 1326(b). Oviedo-Medina's argument is foreclosed by circuit precedent. See United States v. Rivera, 265 F.3d 310,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

312-13 (5th Cir. 2001); United States v. Hinojosa-Lopez, 30 F.3d 691, 693-94 (5th Cir. 1997).

Oviedo-Medina also argues that the "felony" and "aggravated felony" provisions of § 1326(b) are unconstitutional. This challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Oviedo-Medina 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, 276 (5th Cir.), cert. denied, 126 S. Ct. 298 (2005). Oviedo-Medina 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.