

FILED

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40241
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VLADIMIR SALGADO-BRITO, also known as Pablo Alvarez-Gutierrez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:04-CR-551-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Pursuant to a written agreement, Vladimir Salgado-Brito pleaded guilty to illegal reentry after removal from the United States in violation of 8 U.S.C. § 1326(a), (b). He appeals his conviction and sentence of 33 months of imprisonment.

Salgado-Brito argues for the first time on appeal that the "felony" and "aggravated felony" provisions of § 1326(b) are unconstitutional. We need not decide the applicability of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

waiver in this case because the issue that Salgado-Brito raises is foreclosed.

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

Accordingly, the conviction and sentence are AFFIRMED.