

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40405
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOVEL LEONARDO LINO-MEJIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:04-CR-635-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Jovel Leonardo Lino-Mejia appeals his guilty-plea conviction for being an alien found in the United States after deportation subsequent to an aggravated felony conviction. The district court sentenced Lino-Mejia to 63 months of imprisonment and three years of supervised release. We need not decide the applicability of the waiver in this case because the only issue that Lino-Mejia raises is foreclosed.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Lino-Mejia challenges the constitutionality of 8 U.S.C. § 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 in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Lino-Mejia's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Lino-Mejia contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule Almendarez-Torres in light of Apprendi, 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). Lino-Mejia 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 judgment of the district court is
AFFIRMED.