

December 14, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40644
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAFAEL AGUILAR-DELGADO,
also known as Lieonel Villagomez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:03-CR-818-ALL

Before KING, Chief Judge, and HIGGINBOTHAM and SMITH, Circuit Judges.

PER CURIAM:*

Rafael Aguilar-Delgado ("Aguilar") challenges the 46-month sentence imposed on resentencing for his guilty-plea conviction of illegal reentry, in violation of 8 U.S.C. § 1326. He argues that the district court erred in imposing as a special condition of supervised release that he cooperate in the collection of a DNA sample. This claim is not ripe for review. See United States v. Riascos-Cuenu, ___ F.3d ___, No. 05-20037, 2005 WL 2660032 at *1-2 (5th Cir. Oct. 18, 2005). Accordingly, this

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

portion of the appeal is dismissed for lack of jurisdiction. However, the case is remanded for the limited purpose of conforming the judgment to the oral pronouncement that, as a special condition of supervised release, Aguilar cooperate in the collection of a DNA sample.

Aguilar also argues that the sentencing provisions of 8 U.S.C. § 1326(b) are unconstitutional. This claim was decided adversely to him in his original appeal, and the previous determinations of this court stand as the law of the case. See United States v. Becerra, 155 F.3d 740, 752-53 (5th Cir. 1998).

AFFIRMED; DISMISSED IN PART FOR LACK OF JURISDICTION;
LIMITED REMAND TO CORRECT THE JUDGMENT.