

FILED

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40759
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHESTER ENRIQUE ROMERO-ORTIZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:04-CR-903-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Chester Enrique Romero-Ortiz 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 Romero-Ortiz to 33 months of imprisonment and three years of supervised release. To the extent that Romero-Ortiz's challenge to the constitutionality of 8 U.S.C. § 1326 is construed as a challenge to his conviction, it is not precluded by the terms of the plea agreement.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Romero-Ortiz's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Romero-Ortiz 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). Romero-Ortiz 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.