

February 14, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-41063  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN JOSE ROBLES-RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:05-CR-78-ALL  
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Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Juan Jose Robles-Rodriguez (Robles) appeals his guilty-plea conviction and sentence for being an alien found unlawfully in the United States after deportation. Robles argues that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional.

Robles's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Robles contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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). Robles 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.