

April 19, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-41193  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MIGUEL FIGUEROA-ROJAS

Defendant - Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:05-CR-105-ALL  
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Before KING, WIENER and DeMOSS, Circuit Judges.

PER CURIAM:\*

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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

cert. denied, 126 S. Ct. 298 (2005). Figueroa-Rojas 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.

The conviction and sentence of Figueroa-Rojas are AFFIRMED.