

**FILED**

December 17, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-50883  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BENIGNO GOMEZ-BALLESTEROS, also  
known as Pedro Chavez,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:04-CR-462-ALL-DB  
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Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Benigno Gomez-Ballesteros raises arguments that are foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that a prior conviction is a sentencing factor under 8 U.S.C. § 1326(b)(2) and not a separate criminal offense, and by United States v. Pineiro, 377 F.3d 464, 465-66 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263), which held that Blakely v. Washington, 124 S. Ct. 2531 (2004), does not

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

apply to the United States Sentencing Guidelines. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.