United States Court of Appeals
Fifth Circuit

F I L E D

October 2, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-51689
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

BENITO MENA-SEGOVIANO, also known as Angel Perez

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:05-CR-1118-ALL

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:[*]

Benito Mena-Segoviano appeals from his guilty-plea
conviction for illegal reentry into the United States. He argues
that the district court erred by departing upwardly from the
advisory Sentencing Guidelines based upon his criminal history.
As Mena-Segoviano concedes, the departure is reviewed only for
plain error because he did not object on this basis in district
court. See United States v. Jones, 444 F.3d 430, 436 (5th Cir.
2006). Because Mena-Segoviano has failed to show that the
district court's decision to depart upwardly was clear or

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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this opinion should not be published and is not precedent except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.

obvious, he does not warrant relief on this issue. See United
States v. Olano, 507 U.S. 725, 734 (1993).

Mena-Segoviano also challenges the constitutionality of 8
U.S.C. § 1326(b). His constitutional challenge is foreclosed by
Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998).
Although Mena-Segoviano 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). Mena-Segoviano properly
concedes that his argument is foreclosed by Almendarez-Torres and
circuit precedent, but he raises it here solely to preserve it
for further review.

AFFIRMED.