

June 20, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20053
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EPIFANIO ENRIQUEZ-GUEVARA, also known as Heriberto Gil
Martinez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-343-1

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Epifanio Enriquez-Guevara (Enriquez) pleaded guilty to illegal reentry after deportation following conviction for an aggravated felony and was sentenced to 46 months of imprisonment and three years of supervised release.

Enriquez argues that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b) are unconstitutional. This argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Enriquez contends that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Enriquez also argues that the district court erred by ordering him to cooperate in the collection of a DNA sample as a condition of supervised release. This claim is not ripe for review on direct appeal. See United States v. Riascos-Cuenu, 428 F.3d 1100, 1101-02 (5th Cir. 2005), petition for cert. filed (Jan. 9, 2006) (No. 05-8662). The claim is dismissed. See id. at 1102.

JUDGMENT AFFIRMED; APPEAL DISMISSED IN PART.