

June 20, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-20142  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SANTIAGO BARAJAS-MADRIGAL, also known as Santiago Barrajas, also known as Santiago Madrigal Barajas, also known as Santiago M. Barajas,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:04-CR-341-ALL  
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Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Santiago Barajas-Madrigal (Barajas) pleaded guilty to illegal reentry after deportation and was sentenced to 30 months of imprisonment, three years of supervised release, and a \$100 special assessment.

Barajas argues for the first time on appeal that the district court erred in ordering him to cooperate in the collection of a DNA sample as a condition of supervised release

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and that this condition should therefore be vacated. This claim is dismissed for lack of jurisdiction because it is not ripe for review. 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).

Barajas's constitutional challenge to 8 U.S.C. § 1326(b) is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Barajas 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). Barajas 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.

JUDGMENT AFFIRMED; APPEAL DISMISSED IN PART.