

August 25, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-21041  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDWARD CALLE-VILLAREAL, also known as Edward Calle, also  
known as Edward Alfonso Calle,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:05-CR-193  
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Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Edward Calle-Villareal appeals following his guilty plea to a charge of illegally reentering the United States after deportation, in violation of 8 U.S.C. § 1326. Calle-Villareal argues that the district court erred by characterizing his state felony conviction for simple possession of cocaine as an aggravated felony for purposes of U.S.S.G. § 2L1.2(b)(1)(C). Calle-Villareal's argument is unavailing in light of circuit precedent. See United States v. Hinojosa-Lopez, 130 F.3d 691,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

693-94 (5th Cir. 1997). Calle-Villareal argues that this circuit's precedent is inconsistent with Jerome v. United States, 318 U.S. 101 (1943). Having preceded Hinojosa-Lopez, Jerome is not "an intervening Supreme Court case explicitly or implicitly overruling that prior precedent." See United States v. Short, 181 F.3d 620, 624 (5th Cir. 1999).

Calle-Villareal also challenges for the first time on appeal the constitutionality of § 1326(b) in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Calle-Villareal's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Calle-Villareal contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule Almendarez-Torres in light of Apprendi, 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). Calle-Villareal 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.

AFFIRMED.