

FILED

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40414
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ASCENSION GUERECA-TRISTAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-2021-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Ascension Guereca-Tristan (Guereca) pleaded guilty to attempted illegal reentry after deportation and was sentenced to 72 months of imprisonment and three years of supervised release. He contends for the first time on appeal 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 dismissed for lack of jurisdiction because it is not ripe for review. See United States v. Riascos-Cuenu, 428 F.3d 1100, 1101-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

02 (5th Cir. 2005), petition for cert. filed (Jan. 9, 2006) (No. 05-8662).

Guereca contends that 8 U.S.C. § 1326(b) is unconstitutional and that this court should vacate his sentence and remand his case for resentencing to no more than two years in prison under 8 U.S.C. § 1326(a). As he concedes, this contention is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998).

JUDGMENT AFFIRMED; APPEAL DISMISSED IN PART.