

February 24, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40902
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDGAR CASTANEDA-SALGADO,
also known as Guadalupe Guerra,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:05-CR-62-1

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Edgar Castaneda-Salgado, also known as Guadalupe Guerra, appeals his guilty-plea conviction and sentence for illegal reentry following deportation in violation of 8 U.S.C. § 1326. Castaneda-Salgado raises a Fourth Amendment challenge to the collection of a DNA sample as a condition of his supervised release. As Castaneda-Salgado concedes, such a claim is not ripe for review, and we lack jurisdiction to consider it. See United States v. Riascos-Cuenu, 428 F.3d 1100, 1102 (5th Cir. 2005),

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

petition for cert. filed (Jan. 9, 2006) (No. 05-8662).

Accordingly, that portion of the appeal must be dismissed.

Castaneda-Salgado also challenges the constitutionality of § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

Castaneda-Salgado's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Castaneda-Salgado 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). Castaneda-Salgado properly concedes that his argument is foreclosed in light of Almendarez-Torres and circuit precedent, but raises it here to preserve it for further review.

JUDGMENT AFFIRMED; APPEAL DISMISSED IN PART.