

August 28, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-50534  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAUL GARCIA-GARCIA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:04-CR-852-ALL  
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Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Raul Garcia-Garcia (Garcia) pleaded guilty to illegal reentry and was sentenced to 41 months of imprisonment, three years of supervised release, and a \$100 special assessment. Garcia appeals his sentence, arguing that the district court mistakenly believed that the Sentencing Guidelines were mandatory when it sentenced him. In addition, Garcia argues that his sentence is unreasonable and that the enhancement provisions of 8

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S.C. § 1326(b) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

The record belies Garcia's contention that the district court sentenced him believing that the Guidelines were still mandatory. At sentencing, the district court stated that it knew that it was not bound by the Guidelines. Furthermore, there is no indication that the sentence the district court imposed, which was at the low end of the guidelines range of imprisonment, was unreasonable. See United States v. Alonzo, 435 F.3d 551, 554 (5th Cir. 2006).

Garcia's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Garcia 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). Garcia 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.