

REVISED AUGUST 29, 2008

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 07-50691
Conference Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 20, 2008

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

J FIDEL LOPEZ-ZAMORA

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:06-CR-458-ALL

Before GARZA, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

J. Fidel Lopez-Zamora appeals his sentence for illegal reentry following deportation. Lopez-Zamora contends that the 41-month term of imprisonment imposed in his case, based on the enhanced penalty provisions of 8 U.S.C. § 1326(b), exceeds the statutory maximum sentence allowed for the § 1326(a) offense charged in his indictment. The Government moves for summary

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

affirmance on the grounds that Lopez-Zamora's argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998). As Lopez-Zamora concedes, the Government is correct. See *Almendarez-Torres*, 523 U.S. at 235; *United States v. Garza-Lopez*, 410 F.3d 268, 276 (5th Cir. 2005).

Lopez-Zamora filed a motion for appointment of counsel in July 2007, after his counsel had moved to withdraw. The motion to withdraw was denied, and Lopez-Zamora has filed no pleading seeking removal of counsel. Therefore, his motion for appointment of counsel is DENIED as moot.

Because Lopez-Zamora's argument is foreclosed, the Government's motion for summary affirmance is GRANTED. The Government's alternative motion for an extension of time for filing an appellate brief is DENIED, and the judgment of the district court is AFFIRMED.