

August 25, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-20959  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DENNIS ALEXIA LANZA-GUILLEN,  
also known as Dennis Lanza,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:05-CR-83-ALL  
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Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Dennis Alexia Lanza-Guillen appeals his guilty-plea conviction and 57-month sentence for violating 8 U.S.C. § 1326(a) and (b)(2) by being found in the United States without permission, following deportation. Lanza-Guillen challenges as unconstitutional § 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.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Lanza-Guillen's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Lanza-Guillen contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule Almendarez-Torres in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), 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). Lanza-Guillen 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.