

June 22, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41139
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARCOS GALLEGOS-GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CR-163-1

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Marcos Gallegos-Garcia ("Gallegos") has moved to withdraw certain appellate issues from his brief. The motion is GRANTED. Gallegos pleaded guilty to illegal reentry into the United States following deportation and was sentenced to a 36-month term of imprisonment. He argues that his sentence is unconstitutional because it was enhanced for a prior felony conviction under 8 U.S.C. § 1326(b). Gallegos concedes that his argument is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

foreclosed by this court's precedent, but he raises the issue to preserve it for Supreme Court review.

We reject Gallegos's challenge to the constitutionality of 8 U.S.C. § 1326. See Almendarez-Torres v. United States, 523 U.S. 224 (1998); Apprendi v. New Jersey, 530 U.S. 466, 489-90 (2000). This court must follow Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." United States v. Mancia-Perez, 331 F.3d 464, 470 (5th Cir.), cert. denied, 540 U.S. 935 (2003).

MOTION TO WITHDRAW APPELLATE ISSUES GRANTED; AFFIRMED.