

FILED

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41725
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAIME OLVERA-VALDOVINOS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:04-CR-710-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Jaime Olvera-Valdovinos appeals his illegal reentry conviction, challenging the constitutionality of 8 U.S.C. § 1326(b)(1) and (2). We do not reach the applicability of the sentencing waiver because Olvera's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Olvera 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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). Olvera 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.