

November 9, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10454
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ABRAHAM GARCIA-FRANCO,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:05-CR-329-ALL

Before BARKSDALE, DeMOSS, and PRADO, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Abraham Garcia-Franco raises arguments that are foreclosed by United States v. Aquirre-Villa, 460 F.3d 681, 683 (5th Cir. 2006), which held that the district court's refusal to factor in, when sentencing a defendant, the sentencing disparity caused by early disposition programs does not render a sentence unreasonable, and by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. The Government's motion for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 06-10454

-2-

summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.