

October 25, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-20113  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WALTER SINISTERRA-BANGUER, also known as Walter Banguer  
Sinisterra, also known as Walter Robinson Sinisterra-Banguer,  
also known as Walter Sinisterra Banguera,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:05-CR-275-ALL  
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Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

Walter Sinisterra-Banguer appeals from his guilty-plea conviction and sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326. Sinisterra-Banguer argues that the district court erred by imposing a 16-level adjustment under U.S.S.G. § 2L1.2(b)(1)(A)(ii) based upon his Texas conviction for burglary of a habitation. As Sinisterra-Banguer concedes, his argument is foreclosed. See United States v. Valdez-Maltos, 443 F.3d 910, 911 (5th Cir. 2006), cert. denied, 2006 WL 2094539

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(U.S. Oct. 2, 2006) (No. 06-5473); United States v. Garcia-Mendez, 420 F.3d 454, 456-57 (5th Cir. 2005), cert. denied, 126 S. Ct. 1398 (2006).

Sinisterra-Banguer also challenges, in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), the constitutionality of § 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.

Sinisterra-Banguer's constitutional challenge to § 1326 is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although he contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule Almendarez-Torres in light of Apprendi, 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). Sinisterra-Banguer 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.