

June 21, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41470
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN GOMEZ-REYES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-388-ALL

Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Juan Gomez-Reyes (Gomez) pleaded guilty to being found unlawfully in the United States following deportation and was sentenced to a 46-month term of imprisonment and to a two-year period of supervised release. Gomez has appealed his conviction and sentence and contends that the felony and aggravated felony provisions of 8 U.S.C. § 1326(b) are unconstitutional on their face and as applied to him. Gomez's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

235 (1998). Although Gomez contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule Almendarez-Torres, 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). Gomez 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.