

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20275
Conference Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 24, 2006

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRENDA CAROLINA BOCHE,
also known as Maria De Los Angeles Paz-Lopez,
also known as Brenda Pereles,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-381-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Brenda Carolina Boche was convicted, following a bench trial on stipulated facts, of being illegally present in the United States after deportation following an aggravated felony conviction. Boche was sentenced to a 55-month term of imprisonment.

For the first time on appeal, Boche challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Boche contends that her conviction should be reduced to one under 8 U.S.C. § 1326(a)(2) and the judgment reformed to reflect conviction only under that provision.

Boche's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Boche 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). Boche properly concedes that her argument is foreclosed in light of Almendarez-Torres and circuit precedent, but she raises it here to preserve it for further review.

The judgment of the district court is AFFIRMED.