

October 25, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-20929  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERTO RAMIREZ-GUERRERO, also known as Roberto Ramirez,  
also known as Jose Isreal Herrera, also known as Roberto  
Rodrigo Ramirez,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:05-CR-118-ALL  
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Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

Roberto Ramirez-Guerrero pleaded guilty to one count of unlawfully reentering the United States after having been removed subsequent to an aggravated felony conviction in violation of 8 U.S.C. § 1326. In his sole point of error on appeal, Ramirez-Guerrero challenges 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

be found by a jury in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

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

AFFIRMED.