

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40965
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO ALBERTO REYES-NAJERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:05-CR-155-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Ricardo Alberto Reyes-Najera (Reyes) appeals his conviction and sentence under 8 U.S.C. § 1326(b) for being found unlawfully present in the United States after having been deported following his conviction for an aggravated felony. Reyes asserts that the "felony" and "aggravated felony" provisions of § 1326(b) are unconstitutional. We need not decide the applicability of the waiver provisions in this case because the issue that Reyes raises is foreclosed.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Reyes's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Reyes contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule Almendarez-Torres in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), 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). Reyes 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.

The judgment of the district court is AFFIRMED.