

October 25, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-41272  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUSTAVO SANCHEZ-RIVERA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:05-CR-341-ALL  
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Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:\*

Gustavo Sanchez-Rivera pleaded guilty to one charge of attempted illegal reentry into the United States and was sentenced to serve 70 months in prison and a three-year term of supervised release. Sanchez-Rivera argues that the district court erred by concluding that his prior conviction for burglary of a habitation constituted a crime of violence and by assessing a 16-level adjustment for this conviction. This argument is, as Sanchez-Rivera concedes, foreclosed. See United States v. Valdez-Maltos, 443 F.3d 910, 911 (5th Cir. 2006), cert. denied,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2006 WL 2094539 (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).

Sanchez-Rivera also challenges the constitutionality of 8 U.S.C. § 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 in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Sanchez-Rivera's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Sanchez-Rivera 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). Sanchez-Rivera 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.

Sanchez-Rivera has shown no error in connection with his conviction or sentence. Accordingly, the judgment of the district court is AFFIRMED.