

February 14, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41496
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HIPOLITO M. PANIAGUA-MARAVILLA, also known as Martin
Chavez-Alejo,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-406-ALL

Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Hipolito M. Paniagua-Maravilla (Paniagua) appeals his guilty-plea conviction under 8 U.S.C. § 1326(a) and (b). He asserts that the "felony" and "aggravated felony" provisions of the statute cause it to be unconstitutional on its face and as applied in his case. Paniagua's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Paniagua contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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). Paniagua 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.