

August 17, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-50276  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR LUIS GARCIA, also known as Alvaro  
Duran-Lopez, also known as Jesus Renteria,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:04-CR-1782-ALL  
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Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Oscar Luis Garcia raises arguments that are foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that a prior conviction is a sentencing factor under 8 U.S.C. § 1326(b)(2) and not a separate criminal offense, and by United States v. Mares, 402 F.3d 511, 520 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005) (No. 04-9517), and its progeny, which held that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

unpreserved claims based on United States v. Booker, 125 S. Ct. 738 (2005), are reviewed for plain error. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.