

United States Court of Appeals
Fifth Circuit**FILED**

February 24, 2006

Charles R. Fulbruge III
ClerkIN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40943
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEOCADIO VELASQUEZ, also known as Leocadio Pecellin,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:05-CR-131-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Leocadio Velasquez appeals his guilty-plea conviction of being found illegally in the United States after having previously been deported. Velasquez argues that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional both on their face and as applied. Velasquez's constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Velasquez contends that Almendarez-Torres was incorrectly decided

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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). Velasquez 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 district court's judgment is AFFIRMED.