

June 20, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-41456  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDUARDO GARCIA-CAVAZOS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:05-CR-199-ALL  
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Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Eduardo Garcia-Cavazos challenges his guilty-plea conviction and sentence for illegal reentry following deportation, in violation of 8 U.S.C. § 1326. Garcia-Cavazos's argument that his prior burglary conviction in Texas does not qualify as a crime of violence under U.S.S.G. § 2L1.2(b)(1)(A)(ii) has been rejected by this court. See United States v. Garcia-Mendez, 420 F.3d 454, 456-57 (5th Cir. 2005), cert. denied, 126 S. Ct. 1398 (2006).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Garcia-Cavazos's argument that this court did not properly apply the categorical analysis of Taylor v. United States, 495 U.S. 575 (1990), is tantamount to arguing that Garcia-Mendez was wrongly decided. Garcia-Mendez resolved the issue raised in this case; one panel of this court may not ignore the precedent set by a prior panel. United States v. Ruiz, 180 F.3d 675, 676 (5th Cir. 1999).

Garcia-Cavazos also argues that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b)(1) and (b)(2) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). His constitutional challenge is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Although Garcia-Cavazos contends that Almendarez-Torres was incorrectly decided and that a majority of the Supreme Court would overrule Almendarez-Torres in light of Apprendi, 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). Garcia-Cavazos properly concedes that his argument is foreclosed in light of Almendarez-Torres and circuit precedent, but he raises it here to preserve it for review by the Supreme Court.

AFFIRMED.