United States Court of Appeals
Fifth Circuit

F I L E D

December 12, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40172
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VALENTE ACOSTA-LICEA, also known as Valente Acosta,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:05-CR-825

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:[*]

Valente Acosta-Licea appeals from his guilty-plea conviction

and sentence for being found in the United States after previous

deportation. See 8 U.S.C. § 1326. Acosta-Licea argues that the

district court erred by imposing a 16-level adjustment under

U.S.S.G. § 2L1.2(b)(1)(A)(ii) based upon his Texas conviction for

burglary of a habitation. As Acosta-Licea concedes, his argument

is foreclosed by United States v. Garcia-Mendez, 420 F.3d 454,

455-57 (5th Cir. 2005), cert. denied, 126 S. Ct. 1398 (2006), and

although he argues that Garcia-Mendez was incorrectly decided,

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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this opinion should not be published and is not precedent except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-Mendez remains binding. See United States v. Stone, 306
F.3d 241, 243 (5th Cir. 2002).

Acosta-Licea's constitutional challenge to § 1326 is
foreclosed by Almendarez-Torres v. United States, 523 U.S. 224,
235 (1998). Although Acosta-Licea 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). Acosta-
Licea 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.

AFFIRMED.