

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

April 30, 2008

No. 07-51200
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ROBERTO ANTONIO FERNANDEZ, JR

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:07-CR-1017-ALL

Before REAVLEY, JOLLY, and GARZA, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Roberto Antonio Fernandez, Jr., raises arguments challenging the constitutionality of the use of prior convictions pursuant to 21 U.S.C. §§ 841, 851, and 962 to increase his sentence. He concedes that his arguments are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998). See, e.g., *United States v. Mata*, 491 F.3d 237, 245 (5th Cir. 2007), cert. denied, 128 S. Ct. 1219 (2008); *United States v.*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Slaughter, 238 F.3d 580, 582-84 (5th Cir. 2000). The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.