

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4506

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BELTRAN MORALES-ROBLERO, a/k/a Rutilo Bartolon-Bartolon,
a/k/a Enrique Bartolon-Bartolon,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Lacy H. Thornburg,
District Judge. (1:08-cr-00092-LHT-1)

Submitted: January 5, 2010

Decided: January 21, 2010

Before MOTZ and GREGORY, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed by unpublished per curiam opinion.

Claire J. Rauscher, Executive Director, Ross H. Richardson,
FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA, INC., Charlotte,
North Carolina, for Appellant. Edward R. Ryan, United States
Attorney, Charlotte, North Carolina, Amy E. Ray, Assistant
United States Attorney, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Beltran Morales-Roblero pleaded guilty to reentering the United States without permission after having previously been deported following a conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a), (b) (2) (2006). The district court sentenced Morales-Roblero to forty-six months of imprisonment and Morales-Roblero now appeals. Finding no error, we affirm.

On appeal, Morales-Roblero argues that § 1326(b) (1) and (2) are unconstitutional because these sections increase the statutory maximum sentence for a violation of 8 U.S.C. § 1326(a) on the basis of a defendant's prior criminal convictions. As Morales-Roblero raises this argument for the first time on appeal, we review for plain error. Therefore, Morales-Roblero must establish (1) error (2) that was plain, and (3) affected his substantial rights. See United States v. Olano, 507 U.S. 725, 732 (1993). We find no error, however, as Morales-Roblero correctly concedes that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998).

Accordingly, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials

before the court and argument would not aid the decisional process.

AFFIRMED