

April 20, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20608
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS HUMBERTO HAMILTON-REYES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-78-ALL

Before SMITH, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Carlos Humberto Hamilton-Reyes was convicted on his guilty plea of illegal reentry into the United States, for which he was sentenced to serve 94 months in prison and a three-year term of supervised release. He contends that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). He asserts further

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that he would be entitled to relief under Blakely v. Washington, 124 S. Ct. 2531 (2004), if Almendarez-Torres v. United States, 523 U.S. 224 (1998), were overruled.

Hamilton-Reyes's argument concerning the constitutionality of 8 U.S.C. § 1326(b) is, as he concedes, foreclosed. See United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). Since Almendarez-Torres has not been overruled, Hamilton-Reyes is not entitled to relief under Blakely. See Dabeit, 231 F.2d at 984.

AFFIRMED.