

August 17, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40175
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAFAEL VILLALOBOS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:03-CR-963-ALL

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Rafael Villalobos appeals from his guilty-plea conviction of reentry of a deported alien, in violation of 8 U.S.C. § 1326(b)(2) and 6 U.S.C. §§ 202, 557. He argues that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

As Villalobos concedes, his argument that the sentencing provisions in 8 U.S.C. § 1326(b) are unconstitutional was rejected in Almendarez-Torres, 523 U.S. 224, 235 (1998).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90. This court must follow the precedent set in Almendarez-Torres unless the Supreme Court overrules it. See United States v. Rivera, 265 F.3d 310, 312 (5th Cir. 2001). Villalobos's argument is foreclosed.

The judgment of the district court is AFFIRMED.