

FILED

December 17, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-40527
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARMANDO TORRES-AVILA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:02-CR-819-1

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Armando Torres-Avila (Torres) appeals his guilty-plea conviction and sentence for illegal reentry after deportation. 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), and that his sentence is improper under Blakely v. Washington, 124 S. Ct. 2531 (2004). These arguments are, as he concedes, foreclosed. See Almendarez-Torres v. United States, 523 U.S. 224 (1998); United States v. Pineiro, 377 F.3d 464, 465-66 (5th Cir. 2004), petition

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

for cert. filed (U.S. July 14, 2004) (No. 04-5263); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). Torres's conviction and sentence are AFFIRMED.