

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40612
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE VLADIMIR HERNANDEZ-GONZALEZ,
also known as Domecio Infante,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:03-CR-1000-ALL

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

PER CURIAM:*

Jose Vladimir Hernandez-Gonzalez appeals his guilty-plea conviction of being an alien unlawfully present in the United States after having been deported and having been previously convicted of an aggravated felony. Hernandez-Gonzalez argues for the first time on appeal that the viability of Almendarez-Torres v. United States, 523 U.S. 224 (1998), is in doubt given the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). He also argues that if Almendarez-Torres were overruled

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and Blakely v. Washington, 124 S. Ct. 2531 (2004), were held to apply to the federal Sentencing Guidelines, Hernandez-Gonzalez's sentence could not be enhanced by his prior convictions unless those convictions were found beyond a reasonable doubt or Hernandez-Gonzalez admitted to them.

As Hernandez-Gonzalez concedes, Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; see also United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). As Hernandez-Gonzalez also concedes, his Blakely argument is foreclosed. See United States v. Pineiro, 377 F.3d 464, 465-66 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263). The district court's judgment is AFFIRMED.