

June 22, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20869
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS ERNESTO MALDONADO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-275-ALL

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Carlos Ernesto Maldonado pleaded guilty to illegal reentry after deportation following conviction of an aggravated felony and was sentenced to 69 months of imprisonment, three years of supervised release, and a \$100 special assessment.

Maldonado argues for the first time on appeal that the sentencing provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional on their face in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Maldonado acknowledges that his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review. As Maldonado concedes, this issue is foreclosed. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

AFFIRMED.