

November 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41596
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIA ISABEL MARTINEZ-TREVINO,
also known as Isabel Maria Martinez-Trevino,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-1176-ALL

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Maria Isabel Martinez-Trevino ("Martinez") appeals her conviction and sentence for illegal reentry after a previous deportation. She 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). Martinez raises an issue that she concedes is foreclosed, but she seeks to preserve it for further review.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

This argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). 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). The Supreme Court's decisions in Blakely v. Washington, 124 S. Ct. 2531 (2004), and United States v. Booker, 125 S. Ct. 738 (2005), did not overrule Almendarez-Torres. See Booker, 125 S. Ct. at 756; Blakely, 124 S. Ct. at 2536-43. This court does not have the authority to overrule Almendarez-Torres. See Dabeit, 231 F.3d at 984. Accordingly, Martinez's conviction and sentence are AFFIRMED.