

October 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40072
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS FERNANDO DIAZ-SANCHEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-03-CR-1321-All

Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:*

Luis Fernando Diaz-Sanchez (Diaz-Sanchez) appeals his conviction and sentence for illegal re-entry after deportation, a violation of 8 U.S.C. § 1326(b)(2) and 6 U.S.C. §§ 202 and 557. He argues that the "felony" and "aggravated felony" provisions of § 1326(b)(1) and (2) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Diaz-Sanchez raises an issue that he concedes is foreclosed, but he 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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). We must follow the precedent in Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000) (internal quotation marks and citation omitted).

AFFIRMED.