

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 02-20852
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTURO MONJARAZ-REYES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-25-1

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Arturo Monjaraz-Reyes ("Monjaraz") appeals from his conviction and sentence for illegal reentry into the United States after commission of an aggravated felony. His sole argument on appeal is that 8 U.S.C. § 1326(b)(2), which was used to enhance his sentence based on his prior aggravated felony conviction, is unconstitutional.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Monjaraz acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), but asserts that the decision has been cast into doubt by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). He seeks to preserve his argument for further review.

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). This court must follow Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 231 F.3d at 984 (internal quotation marks and citation omitted). The judgment of the district court is AFFIRMED.