

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40206
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HUGO MARTINEZ-MONTES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-01-CR-434-1

October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Hugo Martinez-Montes (Martinez) appeals the 46-month sentence imposed following his guilty plea to illegal reentry following deportation after his conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b)(2). Martinez argues, for the first time on appeal, that the sentence-enhancing provisions contained in 8 U.S.C. § 1326(b)(1) and (b)(2) are unconstitutional on their face and as applied in light of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000).

Martinez concedes that his 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. 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), cert. denied, 531 U.S. 1202 (2001). This court must follow the precedent set in 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).

Accordingly, the district court's judgment is AFFIRMED.