

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50522
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN MANUEL TREVINO-CHAVEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-02-CR-40-ALL-SS

January 6, 2003

Before DAVIS, JONES, and DENNIS, Circuit Judges.

PER CURIAM:*

Juan Manuel Trevino-Chavez appeals the sentence imposed by the district court following his guilty plea to one count of illegally reentering the United States after deportation. Trevino-Chavez contends that the district court abused its discretion when determining the extent of its upward departure from the sentencing guidelines. He also argues that the sentencing provisions of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

8 U.S.C. § 1326(b) are unconstitutional in light of the Supreme Court's holding in Apprendi v. New Jersey, 530 U.S. 466 (2000). Trevino-Chavez acknowledges that his Apprendi argument is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for further Supreme Court review.

We have reviewed the record and the briefs submitted by the parties and perceive no abuse of discretion in the district court's decision to depart upward. See United States v. Laury, 985 F.2d 1293, 1310 (5th Cir. 1993). Under the circumstances presented to the district court, the extent of the upward departure was reasonable. See United States v. Hawkins, 87 F.3d 722, 728 (5th Cir. 1996).

As Trevino-Chavez concedes, his Apprendi argument is foreclosed. See United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 531 U.S. 1202 (2001). The judgment of the district court is therefore AFFIRMED.

AFFIRMED.