

August 20, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40148
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SIXTO RODRIGUEZ RODRIGUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-02-CR-468-1

Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Sixto Rodriguez Rodriguez appeals his guilty plea conviction for illegal reentry into the United States following deportation. He argues that 8 U.S.C. 1326(b), the statute under which he was convicted and sentenced, is unconstitutional on its face and as applied in his case in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). However, Rodriguez concedes that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(1998), but wishes to preserve the issue for further review by the Supreme Court.

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). This court therefore must follow Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 231 F.3d at 984 (internal quotation and citation omitted). Rodriguez's argument is without merit.

AFFIRMED.