

October 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40507  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARMEN NOEL FUENTES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-CR-789-1  
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Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:\*

Carmen Noel Fuentes appeals his sentence for his guilty-plea conviction for illegal reentry into the country after having been deported following an aggravated felony conviction. See 8 U.S.C. § 1326(b)(2). For the first time on appeal, he argues that § 1326(b)(2) is unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

As conceded by Fuentes, his challenge to the constitutionality of 8 U.S.C. § 1326(b)(2) is foreclosed by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which was not overruled by Apprendi. See United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). Moreover, the indictment specifically charged that Fuentes had previously been convicted of an aggravated felony.

AFFIRMED.