

October 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40174
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BENIGNO POZOS-SANTILLAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:03-CR-1463-1

Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:*

Benigno Pozos-Santillan appeals his guilty-plea conviction for illegal reentry into the United States following a prior deportation in violation of 8 U.S.C. § 1326. For the first time on appeal, Pozos-Santillan argues that the sentencing provisions of 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).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Pozos-Santillan acknowledges that his 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 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). Pozos-Santillan's argument is foreclosed. The judgment of the district court is AFFIRMED.