

October 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40291
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN ANTONIO RODRIGUEZ-MEDINA,
also known as Juan Rodriguez-Medina,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-03-CR-1067

Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:*

Juan Antonio Rodriguez-Medina appeals his guilty-plea conviction and sentence for illegal reentry following deportation. He contends that the "felony" and "aggravated felony" provisions of 18 U.S.C. § 1326(b) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

Alternatively, he contends that he may not be convicted and sentenced under 18 U.S.C. § 1326(b) because the indictment did

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not allege that he was deported after a qualifying felony or aggravated felony. Rodriguez-Medina acknowledges that his argument is foreclosed, but seeks to preserve the issue for possible Supreme Court review. As Rodriguez-Medina concedes, this issue is foreclosed. See Almendarez-Torres v. United States, 523 U.S. 224, 247 (1998); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

AFFIRMED.