

August 17, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-41071  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE ANDRES ROMERO-DERAS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:04-CR-174-ALL  
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Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:\*

Jose Andres Romero-Deras ("Romero") appeals his conviction and sentence for illegal reentry after deportation.

Romero argues that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). Romero's argument concerning the constitutionality of 8 U.S.C. § 1326(b) is, as he concedes, foreclosed. See Almendarez-Torres v. United States, 523 U.S. 224

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(1998); United States v. Izaguirre-Flores, 405 F.3d 270, 277-78 (5th Cir. 2005), petition for cert. filed (July 22, 2005) (No. 05-5469).

Romero also contends that his sentence is improper under Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004), and United States v. Booker, 125 S. Ct. 738 (2005). He concedes that the plain-error standard of review applies. Romero has not shown that the district court would have imposed a different sentence under an advisory sentencing scheme. Thus, Romero has not shown plain error in connection with his sentence. See United States v. Martinez-Lugo, 411 F.3d 597, 600-01 (5th Cir. 2005).

The judgment of the district court is AFFIRMED.