

June 2, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50754
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOSE LUIS PEREZ-SERANO

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:04-CR-115-1-WWJ

Before KING, Chief Judge, and HIGGINBOTHAM and PRADO, Circuit
Judges.

PER CURIAM:*

Jose Luis Perez-Serano (Perez) appeals the sentence he
received after he pleaded guilty to illegal reentry. Perez's
argument that the sentencing provisions in 8 U.S.C. § 1326(a) and
(b) are unconstitutional is foreclosed by Almendarez-Torres v.
United States, 523 U.S. 224 (1998). See Apprendi v. New Jersey,
530 U.S. at 466 (2000); United States v. Dabeit, 231 F.3d 979,
984 (5th Cir. 2000); see also Shepard v. United States, 125
S. Ct. 1254, 1262 (2005).

* 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this opinion should not be published and is not precedent except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.

The parties agree that the district court committed error that is plain when it enhanced Perez's sentence based on facts that were not found by a jury or admitted by Perez and when it sentenced Perez using Guidelines that it believed were mandatory. See United States v. Mares, 402 F.3d 511, 520-21 (5th Cir. 2005), petition for cert. filed (U.S. Mar. 31, 2005) (No. 04-9517); United States v. Valenzuela-Quevedo, ___ F.3d ___, No. 03-41754, 2005 WL 941353 at *4 (5th Cir. Apr. 25, 2005). Perez, however, fails to meet his burden of showing that the district court's error affected his substantial rights. See Valenzeuela-Quevedo , 2005 WL 941353 at *4; see also Mares, 402 F.3d at 521. Therefore, the district court's sentence is AFFIRMED.