

FILED

August 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50146
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SILVESTRE CUELLAR,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-03-CR-1087-1-KC

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Relying on Blakely v. Washington, 124 S. Ct. 2531 (2004), Silvestre Cuellar argues that the district court erred by imposing a sentence based on facts that were neither admitted nor found by a jury beyond reasonable doubt. The Government has moved for summary affirmance in lieu of filing an appellee's brief because the issue is foreclosed in this circuit under United States v. Pineiro, No. 03-30437, 2004 WL 1543170, at *1 (5th Cir. July 12, 2004). The issue is indeed foreclosed. The

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Government's motion is GRANTED, and the judgment of the district court is AFFIRMED.