

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2007

No. 07-50206
c/w No. 07-50256
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MARCO ANTONIO CALDERA-LASTRA

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 3:06-CR-1842-ALL
USDC No. 3:06-CR-2633-ALL

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:*

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Marco Antonio Caldera-Lastra challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This court has held that this issue is "fully foreclosed from further debate." *United States v.*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 07-50206
c/w No. 07-50256

Pineda-Arrellano, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202). The Government's motion for summary affirmance is GRANTED, the Government's motion for an extension of time to file a brief is DENIED, and the judgments of the district court are AFFIRMED.