

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40167
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SAUL ROSAS-RESENDIZ,
also known as Pascual Resendiz Rosas,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Texas
USDC No. B-01-CR-417-1

January 28, 2003

Before GARWOOD, WIENER, and DENNIS, Circuit Judges.

PER CURIAM:*

Saul Rosas-Resendiz pleaded guilty to one count of illegally reentering the United States following deportation. He argues for the first time on appeal that the magistrate judge lacked jurisdiction to entertain his guilty plea due to the district court's untimely filing of its order of referral pursuant to 28

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 R. 47.5 the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S.C. § 636.¹ He also argues that the sentencing provisions of 8 U.S.C. § 1326(b) are unconstitutional in light of the Supreme Court's holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Rosas-Resendiz acknowledges that his *Apprendi* argument is foreclosed by the Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), see also *United States v. Dabeit*, 231 F.3d 979, 984 (5th Cir. 2000), *cert. denied*, 531 U.S. 1202 (2001), but he seeks to preserve the issue for further Supreme Court review.

The district court's untimely filing of its order of referral was a procedural defect that Rosas-Resendiz waived when he failed to object to the magistrate judge's actions. See *United States v. Bolivar-Munoz*, ___ F.3d ___ (5th Cir. Nov. 20, 2002), 2002 WL 31599025 at *3. Accordingly, the judgment of the district court is AFFIRMED.

¹After the magistrate judge's report was filed recommending acceptance of the plea, the district court, prior to sentencing, signed its order adopting the report and accepting the plea.