

August 20, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-41701  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE LUIS VILLALOBOS-REYES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-02-CR-724-ALL  
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Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Jose Luis Villalobos-Reyes ("Villalobos-Reyes") appeals his guilty plea conviction and sentence for illegal reentry into the United States following deportation. Villalobos-Reyes argues that the sentencing provisions in 8 U.S.C. § 1326(b)(1) & (b)(2) are unconstitutional based on Apprendi v. New Jersey, 530 U.S. 466 (2000). He also argues that a FED. R. CRIM. P. 11 guilty plea colloquy should not be statutorily or constitutionally delegated to a non-Article III magistrate judge. Villalobos-Reyes concedes

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that his arguments are foreclosed, but he nevertheless seeks to preserve them for Supreme Court review.

Villalobos-Reyes' contention that the enhancement provisions in 8 U.S.C. § 1326(b)(1) & (b)(2) are unconstitutional lacks merit because Apprendi did not overrule Almendarez-Torres v. United States, 523 U.S. 24 (1998). See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

Villalobos-Reyes' contention that a magistrate judge should not be statutorily or constitutionally delegated to conduct a FED. R. CRIM. P. 11 plea colloquy is foreclosed by our decision in United States v. Dees, 125 F.3d 261, 264-68 (5th Cir. 1997).

For the foregoing reasons, Villalobos-Reyes' sentence is AFFIRMED.