

December 1, 2003

Charles R. Fulbruge III  
Clerk

In the  
United States Court of Appeals  
for the Fifth Circuit

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m 02-41797

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

MELVIN AMILCAR URBINA NOLASCO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
m B-02-CR-139-1

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Before SMITH, BARKSDALE, and CLEMENT,  
Circuit Judges.

PER CURIAM:\*

Melvin Urbina Nolasco claims the district  
court erred in sentencing by assigning criminal

history points for his prior uncounseled con-  
viction of illegal reentry, because that convic-  
tion was obtained in violation of the Sixth  
Amendment. We have reviewed the briefs,  
pertinent portions of the record, and the ap-  
plicable authorities and have heard the argu-  
ments of counsel. In the prior proceeding, Ur-  
bina Nolasco knowingly and intelligently  
waived counsel, so there was no constitutional  
violation.

Urbina Nolasco challenges his conviction

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\* Pursuant to 5<sup>TH</sup> CIR. R. 47.5, the court has deter-  
mined that this opinion should not be published and is  
not precedent except under the limited circumstances  
set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

on the ground that the “felony” and “aggravated felony” provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Urbina Nolasco acknowledges that this issue is foreclosed by binding precedent, and he is raising it to preserve it for further review.

The judgment of conviction and sentence is AFFIRMED.