

FILED

September 18, 2003

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40374
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE RODRIGUEZ, also known as
Jose Gonzalez Gonzalez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(B-02-CR-600-1)

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Jose Rodriguez pleaded guilty to attempted illegal reentry following deportation. He contends, for the first time on appeal, that 8 U.S.C. § 1326(b) is unconstitutional in the light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Rodriguez concedes this contention is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998); he raises the issue to preserve it for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Supreme Court review. See *United States v. Dabeit*, 231 F.3d 979, 984 (5th Cir. 2000).

Rodriguez also contends, and the Government concedes, that the written judgment states incorrectly that he was convicted of being found in the United States rather than of attempted illegal reentry. He asks that the district court amend the written judgment pursuant to FED. R. CRIM. P. 36. The record reflects that Rodriguez pleaded guilty to attempted illegal reentry. Accordingly, that part of the judgment is **VACATED** and the case is **REMANDED** for the limited purpose of allowing the district court to amend the written judgment to reflect the proper offense of conviction.

AFFIRMED IN PART;

VACATED IN PART; AND REMANDED FOR AMENDMENT OF JUDGMENT