

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41287
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO VARELA,
also know as John Michael Reyes,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-03-CR-481-1

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Ricardo Varela argues for the first time on appeal that the aggravated felony enhancement found in 8 U.S.C. § 1326(b) is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Varela concedes that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he asserts that Almendarez-Torres has been called into doubt by Apprendi and he seeks to preserve the issue for possible Supreme Court review. We AFFIRM Valera's conviction and sentence.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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

AFFIRMED.