

**FILED**

August 18, 2004

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 04-40004  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MAURICIO RODRIGUEZ-MUNIZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-03-CR-1130-ALL  
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Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:\*

Mauricio Rodriguez-Muniz pleaded guilty to one charge of illegal reentry into the United States. The district court sentenced him to 46 months in prison and a three-year term of supervised release. Rodriguez-Muniz argues in this appeal that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). This argument is, as Rodriguez-Muniz concedes, foreclosed. See Almendarez-Torres v. United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States, 523 U.S. 224 (1998); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). The judgment of the district court is AFFIRMED.