

October 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40226
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN FRANCISCO MATAMOROS-LARA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. V-03-CR-35-2

Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:*

Juan Francisco Matamoros-Lara appeals the sentence imposed under the United States Sentencing Guidelines following his conviction of concealing and transporting illegal aliens in violation of 8 U.S.C. § 1324. For the first time on appeal, Matamoros-Lara argues that he was sentenced in violation of his Sixth Amendment right to a jury trial, as set out in Blakely v. Washington, 124 S. Ct. 2531 (2004), and Apprendi v. New Jersey, 530 U.S. 466 (2000).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Matamoros-Lara's argument is foreclosed by this court's decision in United States v. Pineiro, 377 F.3d 464, 465-66 (5th Cir. 2004)(holding that Blakely does not apply to the federal sentencing guidelines), petition for cert. filed (July 14, 2004) (No. 04-5263). Accordingly, the judgment of the district court is AFFIRMED. Matamoros-Lara's motion to abate the proceedings in his case is DENIED.

AFFIRMED; MOTION DENIED.