

December 10, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40668  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS ANGULO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-03-CR-56-1  
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Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:\*

Carlos Angulo appeals the sentence imposed following entry of his guilty plea to a charge of being found in the United States after deportation in violation of 8 U.S.C. § 1326. Angulo argues that the sentencing provisions of 8 U.S.C. § 1326(b) are unconstitutional. The Government's motion to dismiss is DENIED.

Angulo acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), but asserts that the decision has been cast into doubt by Apprendi v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

New Jersey, 530 U.S. 466, 490 (2000). He seeks to preserve his argument for further review.

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). This court must follow Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 231 F.3d at 984 (internal quotation marks and citation omitted). The judgment of the district court is AFFIRMED.