

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41093
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS ALBERTO VASQUEZ-HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-03-CR-376-1

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Carlos Alberto Vasquez-Hernandez (Vasquez) appeals his guilty plea conviction for illegal reentry into the United States following deportation and after having been convicted of an aggravated felony in violation of 8 U.S.C. § 1326. For the first time on appeal, Vasquez argues that the sentencing provisions of 8 U.S.C. § 1326(b)(1) & (2) are unconstitutional in the light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Vasquez acknowledges that his argument is foreclosed by Almendarez-Torres

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

v. United States, 523 U.S. 224, 235 (1998), but he seeks to preserve the issue for Supreme Court review. Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90. Accordingly, the judgment of the district court is AFFIRMED.