

**FILED**

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 03-41138  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALEJANDRO AYALA-CASTANON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-03-CR-531-ALL  
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Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Alejandro Ayala-Castanon appeals his conviction and sentence for attempted illegal entry after deportation. He argues that the "felony" and "aggravated felony" provisions found at 8 U.S.C. § 1326(a) and (b) are unconstitutional sentencing provisions. He acknowledges that his argument is foreclosed, but he seeks to preserve the issue for possible Supreme Court review in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). As Ayala-Castanon concedes, this issue is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

foreclosed. See Almendarez-Torres v. United States, 523 U.S. 224, 247 (1998); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

Ayala-Castanon also argues that there is an error in the judgment. However, because the district court has corrected this error, this issue is moot.

AFFIRMED.