

FILED

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-41349
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DOMINGO GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-03-CR-260-1

Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Domingo Garcia appeals the sentence imposed following his guilty-plea conviction for being an alien unlawfully found in the United States following deportation after having been previously convicted of an aggravated felony, in violation of 8 U.S.C. § 1326. For the first time on appeal, Garcia argues that the sentencing provisions of 8 U.S.C. § 1326(b)(1) and (b)(2) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Garcia acknowledges that his argument is foreclosed by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Almendarez-Torres v. United States, 523 U.S. 224 (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.