

February 23, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10964
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN ANTONIO MIJARES-ANDRADE,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:04-CR-11-ALL-C

Before BARKSDALE, GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Juan Antonio Mijares-Andrade raises an admittedly foreclosed argument pursuant to Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998) (holding that a prior conviction is a sentencing factor under 8 U.S.C. § 1326(b)(2) and not a separate criminal offense), as well as an argument pursuant to Blakely v. Washington, 124 S. Ct. 2531 (2004). In light of the Supreme Court's ruling in United States v. Booker, 125 S. Ct. 738 (2005), Mijares-Andrade has

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

filed an unopposed motion to abandon his second point-of-error, which raised a Blakely/Booker error. That motion is GRANTED.

Because the only remaining issue on appeal is foreclosed by Almendarez-Torres, as Mijares-Andrade concedes, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.