

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40532
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SERGIO ALANIS-GONZALES, also known as Juan Antonio
Robledo-Pesina,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:03-CR-983-ALL

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Sergio Alanis-Gonzales appeals from his conviction of illegal reentry following deportation after conviction of an aggravated felony. Alanis contends for the first time on appeal that his sentence is constitutionally infirm because Almendarez-Torres v. United States, 523 U.S. 224 (1998), has been cast into doubt by Apprendi v. New Jersey, 530 U.S. 466 (2000), and should be overruled. He also contends that if Almendarez-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Torres were overruled, Blakely v. Washington, 124 S. Ct. 2531 (2004), would apply in determining his sentence. Alanis raises these issues only to preserve them for further review, and he concedes that this court's review is under the plain-error standard.

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). We 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). Further, Blakely does not apply to the federal sentencing guidelines. See United States v. Piniero, 377 F.3d 464, 473 (5th Cir.), petition for cert. filed (U.S. July 14, 2004)(No. 04-5263). Alanis has failed to show error, plain or otherwise, regarding the applicability of Almendarez-Torres or Blakely.

AFFIRMED.