

June 22, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41436
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILFREDO CANALES-CASTILLO,
also known as Wilfredo Villatoro-Canales,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:04-CR-435-ALL

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Wilfredo Canales-Castillo appeals from the sentence imposed following his guilty plea to illegal reentry. See 8 U.S.C. § 1326(b). He argues pursuant to Apprendi v. New Jersey, 530 U.S. 466 (2000), that Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), should be overruled. He concedes that his constitutional argument is foreclosed by Almendarez-Torres, and he raises it to preserve its further review by the Supreme

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Court and to prevent procedural default in the event the law changes.

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 therefore 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).

AFFIRMED.