

June 22, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-50651
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO GOMEZ-GONZALEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:04-CR-205-ALL-PRM

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Pedro Gomez-Gonzalez appeals the sentence imposed following his guilty-plea conviction of illegal reentry in violation of 8 U.S.C. § 1326. Gomez-Gonzalez argues that in light of recent Supreme Court precedent the sentencing provisions set forth in 8 U.S.C. § 1326(b) are unconstitutional and that Almendarez-Torres v. United States, 523 U.S. 224 (1998), should be overruled.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gomez-Gonzalez argues that the rulings in Apprendi v. New Jersey, 530 U.S. 466 (2000), and Blakely v. Washington, 124 S. Ct. 2531 (2004), cast doubt upon the continued validity of Almendarez-Torres.

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). The Court's decision in Blakely, 124 S. Ct. at 2537, and more recently in United States v. Booker, 125 S. Ct. 738, 756 (2005), also did not overrule Almendarez-Torres. This court 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).

The judgment of the district court is AFFIRMED.