

August 24, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 04-51035  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE RENE PEREZ-MARQUEZ,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Western District of Texas  
(3:03-CR-2345-ALL-KC)  
-----

Before JONES, WIENER, and PRADO, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Jose Rene Perez-Marquez ("Perez") appeals his 41-month sentence imposed following his guilty-plea conviction for illegal reentry into the United States following deportation. Citing United States v. Booker, 125 S. Ct. 738 (2005), he argues, for the first time on appeal, that the district court erred in sentencing him under a mandatory guideline scheme.

As Perez did not raise his Booker argument in the district court, we review this issue for plain error. See United States v.

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Valenzuela-Quevedo, 407 F.3d 728, 732-33 (5th Cir. 2005). The district court committed error that is plain when it sentenced Perez under a mandatory guideline scheme. See id. at 733; United States v. Martinez-Lugo, \_\_\_ F.3d \_\_\_, No. 04-40478, 2005 WL 1331282 \*2 (5th Cir. June 7, 2005). Perez fails, however, to meet his burden of showing that the district court's error affected his substantial rights. See Valenzuela-Quevedo, 407 F.3d at 733-34; United States v. Mares, 402 F.3d 511, 521 (5th Cir.), petition for cert. filed (Mar. 31, 2005) (No. 04-9517).

As Perez concedes, his constitutional argument that his sentence, which was enhanced under 8 U.S.C. § 1326(b) for a prior aggravated felony conviction, is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998). See Apprendi v. New Jersey, 530 U.S. 466, 489-90 (2000); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). Accordingly, Perez's sentence is  
AFFIRMED.