

United States Court of Appeals
Fifth Circuit

FILED

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41049
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO JUAREGUI-DURAN,
also known as Jose Roberto Gomez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-03-CR-303-ALL

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Ricardo Juaregui-Duran appeals his guilty plea conviction for illegal reentry into the United States following an aggravated felony conviction in violation of 8 U.S.C. § 1326. As an initial matter, the Government's motion to dismiss is DENIED.

For the first time on appeal, Juaregui-Duran argues that the sentencing provisions of 8 U.S.C. § 1326(b)(1) & (2) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Juaregui-Duran acknowledges that his argument is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review. 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). Accordingly, the judgment of the district court is affirmed.

MOTION TO DISMISS DENIED; AFFIRMED.