

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 20, 2008

No. 07-20580
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

SERGIO VASQUEZ CARBAJAL, also known as Sergio Carvajal Vazquez, also known as Sergio Vasquez-Carbajal, also known as Sergio Carvajal-Vasquez, also known as Sergio Vazquez

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:07-CR-39-ALL

Before GARZA, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Sergio Vasquez Carbajal was convicted of illegal reentry into the United States after having been deported and was sentenced to serve 46 months in prison. In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), he challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

offense that must be found by a jury. This argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998). *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 128 S. Ct. 872 (2008).

The judgment of the district court is **AFFIRMED**.