

2005 WL 486707 (8th Cir.(Iowa))

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--- F.3d ---

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United States Court of Appeals,  
Eighth Circuit.  
UNITED STATES of America, Appellee,  
v.  
Wilton Antonio CERNA-SALGUERO, also known as Juan Antonio Reyes, Appellant.  
No. 04-3474.  
Submitted: Jan. 18, 2005.  
Filed: March 3, 2005.

[Terry Wright](#), Des Moines, IA, for appellant.

[William C. Purdy](#), AUSA, Des Moines, IA, for appellee.

Before [MORRIS SHEPPARD ARNOLD](#), [FAGG](#), and GRUENDER, Circuit Judges.

PER CURIAM.

\*1 Wilton Antonio Cerna-Salguero pleaded guilty to one count of being an illegal alien found in the United States following deportation in violation of [8 U.S.C. § 1326\(a\)](#). The district court [\[FN\\*\]](#) increased Cerna-Salguero's sentence under [8 U.S.C. § 1326\(b\)\(2\)](#), which provides a maximum sentence of twenty years if the alien had an earlier aggravated felony conviction. Cerna-Salguero appeals arguing [§ 1326\(b\)\(2\)](#) is a separate crime and thus he has a Sixth Amendment right to a jury trial for violating and being sentenced under the statute. Cerna-Salguero acknowledges the Supreme Court rejected this argument in [Almendarez-Torres v. United States](#), 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998), and declined to revisit [Almendarez-Torres](#) in [Apprendi v. New Jersey](#), 530 U.S. 466, 489-90, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), which held, "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Cerna-Salguero also acknowledges we have continued to follow [Almendarez-Torres](#) after [Apprendi](#), [United States v. Perez-Perez](#), 337 F.3d 990, 997 (8th Cir.2003) (stating plain language of [Apprendi](#) excepts the fact of earlier convictions from its holding, and thus [§ 1326\(b\)\(2\)](#) does not violate the Sixth Amendment); [United States v. Alvarez](#), 320 F.3d 765, 767 (8th Cir.2002) (stating we must follow [Almendarez-Torres](#) until overruled by the Supreme Court); [United States v. Kempis-Bonola](#), 287 F.3d 699, 702 (8th Cir.2002) (having refused to revisit [Almendarez-Torres](#) in [Apprendi](#), "the legal landscape is clear: [Almendarez-Torres](#) has not been overruled"). Cerna-Salguero candidly acknowledges in his brief that his claim has been rejected by the Supreme Court and "unless pending [guidelines] cases change the law" his appeal fails. The Supreme Court has now decided these cases, and in so doing the Court did not overrule [Almendarez-Torres](#). See [United States v. Booker](#), --- U.S. ---, ---, 125 S.Ct. 738, 756, --- L.Ed.2d ---, --- (2005).

We thus reject Cerna-Salguero's Sixth Amendment challenge to his sentence, and affirm. See 8th Cir. R. 47A(a).

[FN\\*](#) The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

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- [04-3474](#) (Docket) (Oct. 13, 2004)

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