

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

December 18, 2009

No. 08-40764

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

OSCAR CASTELLANO-MARTINEZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-08-70

Before JONES, Chief Judge, and HIGGINBOTHAM and HAYNES, Circuit
Judges.

PER CURIAM:*

The grand jury returned a one count indictment against Oscar Castellano-Martinez, charging §§ 1326(a) and 1326(b), with a maximum penalty of twenty years' imprisonment. Upon a plea of guilty to the single count, the district court sentenced him to thirty-six months in prison. Concluding that the proceedings were infected by the then-evolving principles of *Apprendi*, we VACATE 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 08-40764

judgment of conviction and sentence and REMAND to allow proceedings to commence afresh, including rearraignment, acceptance of any tendered plea of guilty in which Castellano-Martinez admits to the conduct supporting the charge under §§ 1326(a) and 1326(b), which under *Apprendi* includes the elements of both, or to trial upon a plea of not guilty entered by Castellano-Martinez or the court. Nothing herein forecloses the usual processes of plea bargaining.

HAYNES, Circuit Judge, concurring. I concur in remanding this case to the district court to consider this case anew in light of developments in the law. *See, e.g., United States v. Rojas-Luna*, 522 F.3d 502, 504-06 (5th Cir. 2008).