

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40307
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE ANTONIA LAREINAGA-DE LA GUERRA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-99-CR-44-1

December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:*

Jose Antonia Lareinaga-de la Guerra ("Lareinaga") appeals his conviction and 53-month sentence following his plea of guilty to illegal re-entry into the United States after deportation, a violation of 8 U.S.C. § 1326. Lareinaga argues that the felony conviction that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) was an element of the offense that should have been charged in his indictment. He acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

review in light of Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 120 S. Ct. at 2361-62 & n.15; see also United States v. Dabeit, ___ F.3d ___, 2000 WL 1634264 at *4 (5th Cir. Oct. 30, 2000, No. 00-10065). Lareinaga's argument is foreclosed. See Almendarez-Torres, 523 U.S. at 235.

AFFIRMED.