

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 00-40492  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAIME ASTUL VELASQUEZ-RIVERA,

Defendant-Appellant.

---

Appeal from the United States District Court for the  
Southern District of Texas  
USDC No. M-00-CR-34-1

---

December 4, 2000

Before JOLLY, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Jaime Astul Velasquez-Rivera appeals his conviction and 41-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. Velasquez 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

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review in the 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). Velasquez's argument is foreclosed. See Almendarez-Torres, 523 U.S. at 235.

A F F I R M E D.