

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-40817  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EFRAIN ACOSTA-CANALES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-00-CR-81-1  
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April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:\*

Efrain Acosta-Canales ("Acosta-Canales") appeals his sentence following his guilty plea conviction for illegal reentry following deportation in violation of 8 U.S.C. § 1326(a) and (b). He argues that a prior felony conviction must be alleged in the indictment because it is an element of the offense, rather than a mere sentence enhancement.

Acosta-Canales 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 possible Supreme Court review

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

in the light of Apprendi v. New Jersey, 530 U.S. 466 (2000).  
Indeed, Acosta-Canales' argument is foreclosed by  
Almendarez-Torres. See United States v. Dabeit, 231 F.3d 979,  
984 (5th Cir. 2000), petition for cert. filed, (U.S. Jan. 26,  
2001) (No. 00-8299).

AFFIRMED.