

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-40914  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS ENRIQUE BALBI-BOBADILLA, also known as Segundo  
Sagastegui-Boadilla

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-00-CR-165-1  
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February 15, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Carlos Enrique Balbi-Bobadilla pleaded guilty to being illegally present in the United States after having been previously deported. His sentence was enhanced because his prior deportation occurred following an aggravated felony conviction. See 8 U.S.C. § 1326(b). He argues that the indictment in his case was deficient because it failed to allege that his prior deportation followed a conviction for an aggravated felony under § 1326(b).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Balbi-Bobadilla acknowledges that his argument is foreclosed by the Supreme Court's decision in United States v. Almendarez-Torres, 523 U.S. 224 (1998). He seeks to preserve the issue for Supreme Court review in light of the decision in Apprendi v. New Jersey, 120 S. Ct. 2348, 2362 (2000). The Court in Apprendi did not overrule its holding in Almendarez-Torres. See Apprendi, 120 S. Ct. at 2362-63; 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.