

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-41030
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN HUMBERTO MUNOZ-PATLAN, also known as
Fernando Gallardo Ortiz,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-00-CR-166-1

June 15, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Juan Humberto Munoz-Patlan (Munoz) appeals the 77-month sentence he received following his guilty-plea conviction for illegally reentering the United States after deportation, in violation of 8 U.S.C. § 1326. He asserts that the aggravated-felony convictions that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) were an element of the offense that should have been charged in the indictment.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Munoz acknowledges that his argument is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review in light of the decision in Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 120 S. Ct. at 2362; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). Munoz's arguments is foreclosed, and the judgment of the district court is AFFIRMED.