

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21163
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CIPRIANO BARRAZA-CARRILLO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-38-1

October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Cipriano Barraza-Carrillo appeals the 33-month sentence imposed following his plea of guilty to a charge of being found in the United States after having been deported in violation of 8 U.S.C. § 1326. For the first time on appeal, Barraza-Carrillo argues that the sentencing provision of 8 U.S.C. § 1326(b) is unconstitutional in light of the Supreme Court's holding in Apprendi v. New Jersey, 530 U.S. 466 (2000).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Barraza-Carrillo 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.

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 531 U.S. 1202 (2001).

Barraza-Carrillo's argument is foreclosed. The judgment of the district court is AFFIRMED.