

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-50649  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS PUEBLA-HERNANDEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. DR-00-CR-53-1  
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April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:\*

Jesus Puebla-Hernandez appeals the 46-month sentence imposed following his plea of guilty to a charge of being found in the United States after deportation, a violation of 8 U.S.C. § 1326. He contends 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 the indictment.

Puebla-Hernandez 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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), petition for cert. filed, (U.S. Jan. 26, 2001)(No. 00-8299). Puebla-Hernandez's argument is foreclosed.

In his second issue, Puebla-Hernandez asserts that his prior conviction for transporting aliens does not constitute an aggravated-felony conviction for purposes of the sixteen-level increase in his base offense level under U.S.S.G. § 2L1.2. As Puebla-Hernandez concedes, this court has already determined that transporting aliens constitutes an aggravated felony. See United States v. Monjaras-Castaneda, 190 F.3d 326, 331 (5th Cir. 1999), cert. denied, 528 U.S. 1194 (2000). Again, he seeks only to preserve the issue for Supreme Court review.

The judgment of the district court is AFFIRMED.