

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40305
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSÉ ANTONIO SALDIVAR-GONZALEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-99-CR-417-1

- - - - -
December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:*

José Antonio Saldivar-Gonzalez (Saldivar) appeals his conviction and 77-month sentence following his plea of guilty to illegal re-entry into the United States after deportation in violation of 8 U.S.C. § 1326. Saldivar argues 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. He 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 Supreme Court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

review in light of *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000). *Apprendi* did not overrule *Almendarez-Torres*. See *Apprendi*, 120 S. Ct. at 2361-62 & n.15. Saldivar's argument is foreclosed. See *Almendarez-Torres*, 523 U.S. at 235. Accordingly, Saldivar's conviction and sentence are AFFIRMED.