

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-50058
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VICTOR HUGO CHAVEZ-IBARRA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. DP-99-CR-1316-1-DB

October 19, 2000

Before SMITH, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Victor Hugo Chavez-Ibarra appeals his guilty-plea conviction for illegal reentry into the United States after deportation in violation of 8 U.S.C. § 1326. He argues that in view of the Supreme Court's recent decision in Apprendi v. New Jersey, 120 S. Ct. 2348, 2362-63 (2000), his sentence should be vacated because it exceeds the two-year statutory maximum sentence for a violation of § 1326(a). Chavez-Ibarra acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), and states that he is raising the issue to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

preserve it for possible Supreme Court review. Although the Supreme Court noted that Almendarez-Torres may have been incorrectly decided, the Supreme Court did not expressly overrule it in Apprendi. Apprendi, 120 S. Ct. at 2362 & n.15. Chavez-Ibarra's argument is foreclosed by Almendarez-Torres.

AFFIRMED.