

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 00-50727  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS LEON CHACON-ARVIZO,  
also known as Carlos Chacon,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-00-CR-272-1-DB  
-----

December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:\*

Carlos Leon Chacon-Arviso ("Chacon") appeals his sentence following his guilty-plea conviction for illegally reentering the United States after having been deported, in violation of 8 U.S.C. § 1326. Chacon argues that a prior felony conviction is an element of the offense of reentry following deportation after a felony conviction in violation of § 1326(b) and that, because the indictment to which he pleaded guilty failed to allege a prior felony conviction, his sentence is illegal. Chacon

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

concedes that his argument is foreclosed by United States v. Almendarez-Torres, 523 U.S. 224 (1998), but he argues that Apprendi v. New Jersey, 120 S. Ct. 2348, 2362 (2000), casts doubt on Almendarez-Torres and asserts that he is raising the argument to preserve it for Supreme Court review.

Although the Supreme Court noted in Apprendi that, arguably, Almendarez-Torres was incorrectly decided, the Court expressly declined to overrule Almendarez-Torres. Apprendi, 120 S. Ct. at 2362-63 & n.15; United States v. Dabeit, \_\_\_ F.3d \_\_\_ (5th Cir., Oct. 30, 2000, No. 00-10065) 2000 WL 1634264 at \*4. This court is compelled to follow the precedent set in Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 2000 WL at \*4. The district court's judgment is therefore AFFIRMED.