

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20783
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO SANCHEZ-CORTEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-856-ALL

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Ricardo Sanchez-Cortez (Sanchez) appeals his conviction and sentence for illegal reentry after deportation, in violation of 8 U.S.C. § 1326. Sanchez contends that the district court should have suppressed the evidence of his prior administrative deportation because he was deprived of due process during his administrative deportation proceeding. However, Sanchez concedes that he raises the issue only to preserve it 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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, as his argument is foreclosed by United States v. Benitez-Villafuerte, 186 F.3d 651, 656-60 (5th Cir. 1999).

Sanchez also contends that, in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), 8 U.S.C. § 1326(b) is unconstitutional because it does not require a prior felony conviction to be proved as an element of the offense. Sanchez acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but seeks to preserve the issue for Supreme Court review in light of Apprendi v. New Jersey, 530 U.S. 466, 490 (2000).

Apprendi did not overrule Almendarez-Torres. Apprendi, 530 U.S. at 489-90, 496; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). This court must follow Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 231 F.3d at 984 (internal quotation marks and citation omitted).

AFFIRMED.