

October 22, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40537  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN LORENZO REYES-RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. M-02-CR-429-1  
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Before KING, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:\*

Juan Lorenzo Reyes-Rodriguez appeals his guilty-plea conviction and sentence for being an alien found in the United States unlawfully after deportation. He argues for the first time on appeal that 8 U.S.C. § 1326(b) is unconstitutional because it does not require the prior aggravated felony conviction used to increase his sentence to be alleged in the indictment and proven as an element of the offense. He argues that because the indictment did not allege his prior aggravated

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

felony conviction, his sentence to more than two years of imprisonment and one year of supervised release is illegal.

Reyes-Rodriguez acknowledges that his arguments are foreclosed by the Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issues for Supreme Court review in light of the decision in Apprendi v. New Jersey, 530 U.S. 466 (2000).

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). Reyes-Rodriguez's arguments are foreclosed. The judgment of the district court is AFFIRMED.