

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-20396

Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIGUEL ANGEL QUINTERO-HERRERA,  
also known as Miguel Angel Quintero-Guerrero,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Southern District of Texas  
(H-99-CR-528-1)

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September 24, 2001

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Quintero-Herrera pled guilty to illegally reentering the United States in violation of 8 U.S.C. §§ 1326(a) and (b)(2). He challenges the district court's calculation of his criminal history as well as its finding that his prior forgery conviction was an aggravated felony.

Quintero-Herrera claims that the district court should have

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

permitted him to attack his prior conviction collaterally at sentencing because the conviction is void. But a defendant has no right to bring such a challenge at sentencing, with the sole exception of convictions obtained in violation of the right to counsel.<sup>1</sup>

Quintero-Herrera also contends that his prior forgery conviction was not an aggravated felony under 8 U.S.C. § 1101(a)(43). That section states that "an offense relating to ... forgery" with a "term of imprisonment" of at least one year is an aggravated felony.<sup>2</sup> Quintero-Herrera was sentenced to one year in a state jail for a type of forgery. His argument is without merit.

In addition, Quintero-Herrera argues that his prior conviction was an element of the offense that should have been listed in the indictment. He concedes that *Almendarez-Torres v. United States*<sup>3</sup> forecloses this issue, and raises it merely to preserve it for further review.

AFFIRMED.

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<sup>1</sup> *Daniels v. United States*, 121 S. Ct. 1578, 1580 (2001).

<sup>2</sup> 8 U.S.C. § 1101(a)(43)(R).

<sup>3</sup> 523 U.S. 224 (1998).