

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 00-20405  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ESTEBAN RICARDO SANCHEZ-BARILLA, also known as  
Esteban Ricardo Sanchez-Aguilar

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-99-CR-725-1  
-----

February 15, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Esteban Ricardo Sanchez-Barilla appeals his conviction and 46-month sentence following his plea of guilty to illegal reentry into the United States after deportation, a violation of 8 U.S.C. § 1326. Sanchez argues that the felony conviction that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) was an element of the offense that should have been charged in his indictment. He acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

seeks to preserve the issue for Supreme Court review in light of Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 120 S. Ct. at 2361-62 & n.15. Sanchez's claim is foreclosed. See Almendarez-Torres, 523 U.S. at 235.

AFFIRMED.