

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-20587  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRES FRANCISCO PEDRO,  
also known as Andres Francisco Garcia,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-99-CR-728-1  
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April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:\*

Andres Francisco Pedro (Pedro) appeals his conviction and sentence following a guilty plea to illegal reentry into the United States following deportation in violation of 8 U.S.C. § 1326(a)(1) and (b)(2). Pedro argues he should have been sentenced to no more than two years of imprisonment because a prior felony conviction is an element of the offense of reentry following deportation after a felony conviction. Pedro concedes that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998). Pedro contends, however, that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Apprendi v. New Jersey, 120 S. Ct. 2348, 2362 (2000), casts doubt on Almendarez-Torres and 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, 231 F.3d 979, 984 (5th Cir. 2000), petition for cert. filed, (U.S. Jan. 26, 2001) (No. 00-8299). This court is compelled to follow the precedent set in Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Id. (internal quotation and citation omitted). Such is true even if it seems "pellucidly clear" that given the opportunity, the Supreme Court would overrule its precedent. Id. Without the benefit of Apprendi, Pedro's claim fails.

Pedro's conviction and sentence are AFFIRMED.