

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-31002  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID ESTUARDO BARREDA-ALVARADO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 00-CR-70-ALL  
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April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges

PER CURIAM:\*

David Estuardo Barreda-Alvarado appeals the sentence imposed following his plea of guilty to a charge of being found in the United States after deportation, a violation of 8 U.S.C. § 1326. He contends that he has been sentenced to illegally lengthy terms of imprisonment and supervised release because the felony conviction that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) was an element of the offense required to be charged in the indictment.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Barreda-Alvarado acknowledges that his argument is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue 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, 120 S. Ct. at 2362; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 2001 WL 77067 (U.S. Feb. 26, 2001) (No. 00-8299). Barreda-Alvarado's argument is foreclosed. The judgment of the district court is AFFIRMED.