

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-40353  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAMON CASAREZ-HERRERA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-99-CR-486-1  
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December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:\*

In this appeal following his guilty-plea conviction for illegally reentering the United States after having been deported, in violation of 8 U.S.C. § 1326(a) and (b)(2), Ramon Casarez-Herrera argues that a prior felony conviction is an element of the offense of illegal reentry, and that because this element was not included in his indictment, his sentence should be vacated and he should be resentenced under a maximum term of two years. Casarez acknowledges that in Almendarez-Torres v. United States, 523 U.S. 224, 226-27 (1998), the Supreme Court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

held that a prior felony conviction under 8 U.S.C. § 1326(b)(2) was merely a sentencing factor and thus need not be included in the indictment. He notes that in its subsequent decision in Apprendi v. New Jersey, 120 S. Ct. 2348, 2362 (2000), however, the Supreme Court stated that it was arguable that Almendarez-Torres was decided incorrectly.

In light of the clear precedent of Almendarez-Torres, Casarez has failed to show error, plain or otherwise, in his indictment or sentence. See United States v. Dabeit, \_\_\_ F.3d \_\_\_ (5th Cir., Oct. 30, 2000, No. 00-10065) 2000 WL 1634264 at \*4. The judgment of the district court is

AFFIRMED.