

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40370
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO SAUCEDA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-99-CR-621-1

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Francisco Saucedo appeals the 77-month sentence imposed following his guilty plea to a charge of attempted illegal reentry into the United States following deportation, a violation of 8 U.S.C. § 1326. He contends that the aggravated-felony conviction that resulted in his enhanced sentence under 8 U.S.C. § 1326(b)(2) was an element of the offense that should have been alleged in the indictment. Saucedo 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

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 the decision in Apprendi v. New Jersey, 530 U.S. 466 (2000).

Apprendi did not overrule Almendarez-Torres. See United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). Saucedá's argument is foreclosed. The judgment of the district court is AFFIRMED.