

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40783
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ESTEBAN LOPEZ-SOLIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-00-CR-49-1

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Esteban Lopez-Solis ("Lopez") appeals his conviction and 70-month sentence following his guilty plea to illegal reentry after deportation in violation of 8 U.S.C. § 1326. Lopez 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 the indictment. He acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for possible Supreme Court review in light of Appendi

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 120 S. Ct. at 2362-63; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), petition for cert. filed, (U.S. Jan. 26, 2001)(No. 00-8299). Lopez's argument is foreclosed. See Almendarez-Torres, 523 U.S. at 235. Accordingly, Lopez's conviction and sentence are AFFIRMED.

AFFIRMED.