

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40909
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROGELIO HUERTA-VALLIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-00-CR-179-1

February 15, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Rogelio Huerta-Vallin appeals his guilty-plea conviction and sentence for being an alien illegally found in the United States subsequent to deportation. See 8 U.S.C. § 1326. He argues that a prior offense, upon which his sentence was enhanced, is an element of an 8 U.S.C. § 1326(b) offense and that the failure of the indictment to allege the element results in an illegal sentence. He relies on Apprendi v. New Jersey, 120 S. Ct. 2348, 2362-63 (2000), for support. He acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

224, 226-27 (1998), but he suggests that the holding of Apprendi places the authority of Almendarez-Torres in question. He raises the issue to preserve it for possible Supreme Court review. This court is "compelled to follow faithfully a directly controlling Supreme Court precedent unless and until the Supreme Court itself determines to overrule it." United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000) (internal quotation and citation omitted), petition for cert. filed (U.S. Jan. 26, 2001) (No. 00-8299). Accordingly, Huerta-Vallin's argument is without merit. See id.

AFFIRMED.