

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-41186
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALFREDO LUIS-VASQUEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-99-CR-225-1
- - - - -

August 2, 2001

Before JOLLY, DAVIS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Alfredo Luis-Vasquez argues that the aggravated-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 Supreme Court review in light of 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

S. Ct. 1214 (2001). His argument is foreclosed by Almendarez-Torres, 523 U.S. at 235.

On the issue of Luis Vasquez's resentencing, we accept the Government's confession of error and remand to the able district judge for resentencing, without the 19 months added on the first remand.

REMANDED.