

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-41404
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PASQUEL URIBE-HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-00-CR-312-1

October 26, 2001

Before WIENER, BENAVIDES, and DENNIS Circuit Judges.

PER CURIAM:*

Pasquel Uribe-Hernandez ("Uribe") appeals his conviction and 46-month sentence following his plea of guilty to illegal reentry into the United States after deportation, a violation of 8 U.S.C. § 1326. Uribe 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 his indictment.

Uribe 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

decision in Apprendi because the Supreme Court indicated in Apprendi that Almendarez-Torres may have been wrongly decided. Because the Supreme Court has not overruled Almendarez-Torres, this court is compelled to follow it. See United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). Uribe's argument is foreclosed. See Almendarez-Torres, 523 U.S. at 235.

Uribe's conviction and sentence are AFFIRMED.