

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21306
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE JAVIER DOMINGUEZ-VILLARREAL,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-464-ALL

October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Jose Javier Dominguez-Villarreal appeals the 96-month sentence imposed following his plea of guilty to a charge of being found in the United States after deportation following an aggravated-felony conviction, a violation of 8 U.S.C. § 1326(a) & (b)(2). He contends that 8 U.S.C. § 1326(b)(2) is unconstitutional because it treats a prior aggravated-felony conviction as a mere sentencing factor and not an element of the offense.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Dominguez-Villarreal 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 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 Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 531 U.S. 1202 (2001). Dominguez-Villarreal's argument is foreclosed. The judgment of the district court is AFFIRMED.