

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40597
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GILBERTO FLORES-BAUTISTA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-01-CR-509-ALL

December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Gilberto Flores-Bautista appeals his guilty-plea conviction for illegally reentering the United States after having been deported. He contends that the sentence-enhancing provisions of 8 U.S.C. § 1326(b)(1) and (b)(2) are unconstitutional on their face in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), and that the unconstitutionality of the statute is not remedied by the fact that the indictment alleged that he had been convicted

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of a prior aggravated felony. Acknowledging that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), he seeks to preserve the issue for Supreme Court review.

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabiet, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 531 U.S. 1202 (2001). This court will follow the precedent set in Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabiet, 231 F.3d at 984 (internal quotation and citation omitted).

AFFIRMED.