

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50264
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS CEDILLO-AGUIRRE,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. DR-01-CR-528-ALL-WWJ

December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Carlos Cedillo-Aguirre ("Cedillo") appeals the sentencing following his jury conviction for illegal reentry into the United States following deportation. Cedillo contends that 8 U.S.C. § 1326(b)(2) is unconstitutional because it treats a prior conviction for an aggravated felony as a mere sentencing factor and not an element of the offense. Cedillo concedes that his argument is foreclosed by Almendarez-Torres v. United States, 523

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S. 224 (1998), but he nevertheless 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). Cedillo's argument is foreclosed. Therefore, Cedillo's conviction and sentence are AFFIRMED.