

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-50456  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO GUZMAN-NAJERA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-01-CR-1813-ALL-DB  
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December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Ricardo Guzman-Najera appeals the 30-month sentence imposed following his plea of guilty to a charge of being found in the United States after deportation, a violation of 8 U.S.C. § 1326. 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.

Guzman-Najera acknowledges that his argument is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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). Guzman-Najera's argument is foreclosed. The judgment of the district court is AFFIRMED.