

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41232
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VALENTIN MALDONADO-ALAMEDA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-03-CR-459-1

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Valentin Maldonado-Alameda (Maldonado) appeals the 70-month sentence imposed following his plea of guilty to a charge of attempted reentry into the United States after deportation, a violation of 8 U.S.C. § 1326. He contends 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 the indictment.

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

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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). Since Maldonado's argument is foreclosed, the judgment of the district court will be AFFIRMED.

AFFIRMED.