IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 00-21086
Conference Calendar
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UNITED STATES OF AMERICA,

                                        Plaintiff-Appellee,

versus

ALEJANDRO BETANCOURT-SANCHEZ,

                                        Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CR-473-1

June 15, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:[*]

     Alejandro Betancourt-Sanchez (Betancourt) appeals his

conviction and sentence following a guilty plea to illegal

reentry into the United States following deportation in violation

of 8 U.S.C. § 1326(a)(1) and (b)(2).

     First, he argues 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.

He acknowledges that his argument is foreclosed by the Supreme

Court's decision in <u>Almendarez-Torres v. United States</u>, 523 U.S.

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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that this opinion should not be published and is not precedent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.

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. 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). Betancourt's argument is foreclosed.

Next, Betancourt argues that his indictment was defective under the Fifth and Sixth Amendments because it did not allege general intent. Because Betancourt did not challenge his indictment in the district court, we review whether it was constitutionally sufficient under a "maximum liberality" standard. See United States v. Guzman-Ocampo, 236 F.3d 233, 236 (5th Cir. 2000). Betancourt's indictment "fairly imported that his reentry was a voluntary act" and satisfied the constitutional requirements of a valid indictment. See id. at 236, 239 & n.13.

AFFIRMED.