

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-21151
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AURELIO RANGEL,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CR-333-1
- - - - -

August 2, 2001

Before DeMOSS, PARKER, and DENNIS, Circuit Judges.

PER CURIAM:*

Aurelio Rangel Barron appeals his guilty-plea conviction for illegal reentry into the United States following deportation in violation of 8 U.S.C. § 1326. Rangel argues that a prior felony conviction is an element of the offense that must be alleged in the indictment rather than a sentencing factor. Rangel acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for possible Supreme Court review in the light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Apprendi did not

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

overrule Almendarez-Torres. See United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). Rangel's first argument is therefore foreclosed.

Rangel also argues that his indictment does not charge an offense because it fails to allege any general intent on his part. Rangel's indictment, however, "fairly conveyed that [his] presence was a voluntary act from the allegations that he was deported, removed, and subsequently present without consent of the Attorney General." See United States v. Berrios-Centeno, 250 F.3d 294, 299-300 (5th Cir. 2001). Accordingly, his indictment sufficiently alleged the general intent required of 8 U.S.C. § 1326 offenses. See id. at 297-300.

AFFIRMED.