

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10889
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CESAR MENDOZA-HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:00-CR-120-1-D

February 15, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Cesar Mendoza-Hernandez ("Mendoza-Hernandez") appeals his sentence following his guilty plea conviction for illegal reentry following deportation in violation of 8 U.S.C. § 1326(a) and (b)(2). He argues that a prior felony conviction must be alleged in the indictment because it is an element of the offense, rather than a mere sentence enhancement.

Mendoza-Hernandez 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Court review in the light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Indeed, Mendoza-Hernandez' argument is foreclosed by Almendarez-Torres. See United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), petition for cert. filed, (U.S. Jan. 26, 2001)(No. 00-8299).

AFFIRMED.