

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20493
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN ANTONIO CRUZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-99-CR-665-1

February 15, 2001

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

PER CURIAM:*

Juan Antonio Cruz ("Cruz") appeals his conviction for illegal reentry after deportation, pursuant to 8 U.S.C. § 1326. He contends that the district court erred in denying his motion to suppress the evidence of his prior deportation, in which he argued that his prior deportation proceedings violated his right to due process. He also contends that his sentence should be vacated because the Government did not allege his prior felony conviction in the indictment.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Cruz concedes that the issues raised in this appeal are foreclosed by this court's decision in United States v. Benitez-Villafuerte, 186 F.3d 651, 657-58 (5th Cir. 1999), cert. denied, 120 S. Ct. 838 (2000), and the Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), and that he raises the issues solely to preserve them for review by the Supreme Court. This court affirms the judgment of the district court.

AFFIRMED.