

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40816
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSÉ SANTOS-JIMENEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-00-CR-161-1

February 15, 2001

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

PER CURIAM:*

José Santos-Jimenez appeals the sentence he received after he pleaded guilty to illegally reentering the United States after deportation in violation of 8 U.S.C. § 1326. His argument that his prior felony conviction is an element of the offense, rather than a sentencing factor, is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). He concedes as much, but he raises the issue to preserve it for possible review by the Supreme Court. Accordingly, we AFFIRM the judgment of the district court.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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