

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40874
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GALVINO DOMINGUEZ-TREVINO

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CR-173-1

February 15, 2001

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

PER CURIAM:*

Galvino Dominguez-Trevino pleaded guilty to being illegally present in the United States after having been previously deported. His sentence was enhanced because his prior deportation occurred following an aggravated felony conviction. See 8 U.S.C. § 1326(b). He argues that, under Apprendi v. New Jersey, 120 S. Ct. 2348, 2362 (2000), the indictment in his case was deficient because it failed to allege that his prior deportation followed a conviction for an aggravated felony under § 1326(b).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Dominguez-Trevino's argument is without merit given the Supreme Court's decision in United States v. Almendarez-Torres, 523 U.S. 224 (1998). The Court in Apprendi did not overrule its holding in Almendarez-Torres. See Apprendi, 120 S. Ct. at 2362-63; 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.