

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40941
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARTIN GARZA-HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-00-CR-136-1

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Martin Garza-Hernandez appeals his guilty-plea conviction for illegal reentry following deportation, a violation of 8 U.S.C. § 1326. Garza argues that, in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466, ___, 120 S. Ct. 2348, 2362-63 (2000), his prior felony conviction was an element of the offense and that the indictment was fundamentally defective in failing to allege that element. Accordingly, Garza contends, the district court erred by increasing his offense level pursuant to U.S.S.G.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 2L1.2(b)(1)(A). As Garza acknowledges, this argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). See United States v. Chapa-Garza, ___ F.3d ___ (5th Cir. Mar. 1, 2001), 2001 WL 209468, *6; United States v. Nava-Perez, 242 F.3d 277, ___ (5th Cir. Feb. 12, 2001), 2001 WL 118395, *2.

AFFIRMED.