

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20528
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOEL LOPEZ-ORTIZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-591-1

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Joel Lopez-Ortiz was found guilty following a stipulated bench trial of being found unlawfully present in the United States after deportation, in violation of 8 U.S.C. § 1326(a). He argues that the indictment should be dismissed under United States v. Mendoza-Lopez, 481 U.S. 828 (1987), and 8 U.S.C. § 1326(d) because the immigration judge who ordered him deported applied the wrong amendments to the immigration code and erroneously treated his felony conviction as an "aggravated

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

felony." He concedes that his arguments are foreclosed by Fifth Circuit precedent as well as the law of the case doctrine, and he raises them solely to preserve the issues for further review.

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that an appellee's brief not be required. The motion is GRANTED. The judgment of the district court is AFFIRMED.

AFFIRMED; MOTION GRANTED.