

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40502
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BERNARDO GOMEZ-INFANTE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-00-CR-3-ALL

December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges

PER CURIAM:*

Bernardo Gomez-Infante appeals his conviction and 77-month sentence following his plea of guilty to illegal re-entry into the United States after deportation, a violation of 8 U.S.C. § 1326. Gomez argues that the felony conviction that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) was an element of the offense that should have been charged in his indictment. He acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review in light of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 120 S. Ct. at 2361-62 & n.15. Gomez's argument is foreclosed. See Almendarez-Torres, 523 U.S. at 235.

AFFIRMED.