

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40573
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OBED CARDENAS, also known as Saul Rangel-Robles, also known as
Abram Nava-Rangel,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-00-CR-33-1

December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:*

Obed Cardenas ("Cardenas") appeals his sentence following his guilty plea conviction for illegal reentry following deportation in violation of 8 U.S.C. § 1326(a) and (b). He argues that a prior felony conviction must be alleged in the indictment because it is an element of the offense, rather than a mere sentence enhancement.

Cardenas acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

seeks to preserve the issue for possible Supreme Court review in the light of Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). Indeed, Cardenas' argument is foreclosed by Almendarez-Torres. See United States v. Dabeit, ___F.3d___ (5th Cir. Oct. 30, 2000, No. 00-10065), 2000 WL 1634264, at *4.

AFFIRMED.