

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-50199  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE SANTOS LOZANO-GUTIERREZ, ALSO KNOWN AS Santos Lozano,  
also known as Santos Lozano Gutierrez,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-99-CR-453-1-HG  
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December 13, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:\*

Jose Santos Lozano-Gutierrez pleaded guilty to illegal reentry into the United States after having been previously deported. His sentence was enhanced because his prior deportation occurred following a felony conviction. See 8 U.S.C. § 1326(b). For the first time on appeal, Lozano-Gutierrez argues that, under Apprendi v. New Jersey, 120 S. Ct. 2348, 2362 (2000), the indictment in his case was deficient because it failed to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

allege that his prior deportation followed a conviction for an aggravated felony under § 1326(b).

Lozano-Gutierrez'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. Lozano-Gutierrez's guilty-plea conviction is therefore AFFIRMED.