

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-50648
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSÉ LUIS MUNOZ-LARA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. DR-00-CR-79-1

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

José Luis Munoz-Lara appeals his conviction and 60-month sentence for being found in the United States after deportation in violation of 8 U.S.C. § 1326. Munoz-Lara argues that the district court erred by denying his motion to dismiss the indictment because his prior deportation did not meet the basic standards of due process. Munoz-Lara acknowledges that the due process issue is foreclosed by United States v. Benitez-Villafuerte, 186 F.3d 651 (5th Cir. 1999), cert. denied, 528 U.S.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

1097 (2000). He seeks to preserve the issue for Supreme Court review.

He also contends that the felony conviction that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) is an element of the offense that must have been charged in the indictment. Munoz-Lara acknowledges that this argument also is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he again seeks to preserve the issue for Supreme Court review in light of the decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 120 S. Ct. at 2362; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), petition for cert. filed, (U.S. Jan. 26, 2001)(No. 00-8299).

As Munoz-Lara concedes, his arguments are foreclosed. His conviction and sentence are AFFIRMED.