

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-50748  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS PENUELAS-MONTOYA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. DR-00-CR-64-1  
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June 15, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:\*

Jesus Penuelas-Montoya appeals from his conditional-guilty-plea conviction of illegal reentry after deportation, pursuant to 8 U.S.C. § 1326. He contends that the district court erred in denying his motion to dismiss the indictment because his previous deportation proceedings violated the Due Process Clause. He also contends that his sentence should be vacated because the Government did not allege his prior felony conviction in the indictment.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Penuelas concedes that the issues raised in this appeal are foreclosed by this court's decision in *United States v. Benitez-Villafuerte*, 186 F.3d 651, 657-58 (5th Cir. 1999), *cert. denied*, 528 U.S. 1097 (2000), and the Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998), and that he raises the issues solely to preserve them for review by the Supreme Court. This court affirms the judgment of the district court.

AFFIRMED.