

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20098
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO PADILLA-VENEGAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CR-530-ALL

August 7, 2001

Before POLITZ, JOLLY, and DAVIS, Circuit Judges.

PER CURIAM:*

Pedro Padilla-Venegas appeals his conviction and sentence for being in the United States without permission of the Attorney General after his deportation following his conviction of a felony, a violation of 8 U.S.C. § 1326(a). Padilla challenges the sufficiency of his indictment because it did not allege that he acted with intent to commit the offense. Padilla's contention is foreclosed by our holding

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

in United States v. Berrios-Centeno¹ that an indictment charging a violation of § 1326 “fairly convey[s] that [the defendant’s] presence was a voluntary act from the allegations that he was deported, removed, and subsequently present without consent of the Attorney General.” Absent a ruling by the Supreme Court or this court en banc, that precedent is binding and dispositive herein.²

AFFIRMED.

¹250 F.3d 294 (5th Cir. 2001),

²United States v. Short, 181 F.3d 620 (5th Cir. 1999), cert. denied, 528 U.S. 1091 (2000); United States v. Mathena, 23 F.3d 87 (5th Cir. 1994).