

FILED

August 18, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-60237
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ISMAEL VASQUEZ-FONSECA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:03-CR-113-1

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

Ismael Vasquez-Fonseca appeals from his guilty-plea conviction of illegally reentering the United States after having been deported and after having been convicted of an "aggravated felony," a violation of 8 U.S.C. § 1326. Vasquez contends that the district court erred by denying his motion to suppress evidence of his deportation and to dismiss the indictment. He argues that his 1996 deportation proceeding violated the Due Process Clause because the immigration judge erroneously failed

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

to inform him that he was eligible for discretionary relief from deportation under former § 212(c) of the Immigration and Nationality Act ("INA"). Vasquez concedes that his contention is foreclosed by this court's case law, but he raises the claim to preserve it for further review.

An immigration judge's error in failing to inform an alien of eligibility for forms of discretionary relief under the INA does not violate the alien's right to due process. United States v. Lopez-Ortiz, 313 F.3d 225, 230-31 (5th Cir. 2002), cert. denied, 537 U.S. 1135 (2003). The district court did not err by denying Vasquez' motion to suppress evidence of his deportation and to dismiss his indictment.

AFFIRMED.