

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10275
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO JAVIER SOLIS-GARCIA, also known as Thomas
Ochoa Perez,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:99-CR-445-1-D

December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:*

Francisco Javier Solis-Garcia appeals his guilty-plea conviction for illegal reentry following deportation, a violation of 8 U.S.C. § 1326. Solis argues that, in view of the Supreme Court's recent decision in Apprendi v. New Jersey, 120 S. Ct. 2348, 2362-63 (2000), his sentence should be vacated because it exceeds the two-year statutory maximum sentence for a violation of § 1326(a). Solis acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), and states that he is raising the issue to preserve it for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

possible Supreme Court review. The Supreme Court did not expressly overrule Almendarez-Torres in Apprendi. 120 S. Ct. at 2362 & n.15. Solis' argument is foreclosed by Almendarez-Torres.

AFFIRMED.