

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10996
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DOMINGO MORA-HINOJOS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:00-CR-21-1-C

February 15, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Domingo Mora-Hinojos ("Mora") appeals his sentence following his guilty-plea conviction for illegally reentering the United States after having been deported, in violation of 8 U.S.C. § 1326. Mora argues that a prior aggravated-felony conviction is an element of the offense of reentry following deportation after an aggravated-felony conviction in violation of § 1326(b) and that, because the indictment to which he pleaded guilty failed to allege a prior felony conviction, his sentence is illegal. Mora concedes that his argument is foreclosed by United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Almendarez-Torres, 523 U.S. 224 (1998), but he argues that Apprendi v. New Jersey, 120 S. Ct. 2348, 2362 (2000), casts doubt on Almendarez-Torres and asserts that he is raising the argument to preserve it for Supreme Court review.

Although the Supreme Court noted in Apprendi that, arguably, Almendarez-Torres was incorrectly decided, the Court expressly declined to overrule Almendarez-Torres. Apprendi, 120 S. Ct. at 2362-63 & n.15; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), petition for cert. filed (U.S. Jan. 26, 2001) (No. 00-8299). This court is compelled to follow the precedent set in Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 231 F.3d at 984 (internal quotation and citation omitted). The district court's judgment is therefore AFFIRMED.