

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-50132
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ENRIQUE GOMEZ-SALAZAR, also known as
Jessie (Jesus) Bonilla,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. DR-99-CR-227-1

October 19, 2000

Before SMITH, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Enrique Gomez-Salazar appeals his sentence imposed for illegal reentry into the United States following this court's remand for resentencing. Gomez-Salazar argues that his prior conviction for transporting aliens does not constitute an aggravated felony within the meaning of 8 U.S.C. § 1101(a)(43)(N) and § 2L1.2 of the United States Sentencing Guidelines. He argues that the rule of lenity requires that § 1101(a)(43)(N) be interpreted as not including transporting aliens within the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

definition of aggravated felony. Gomez-Salazar acknowledges that his argument is foreclosed by this court's decision in United States v. Monjaras-Castaneda, 190 F.3d 326 (5th Cir. 1999), cert. denied, 120 S. Ct. 1254 (2000), and states that he is raising the issue to preserve it for possible Supreme Court review. Monjaras-Castaneda forecloses this argument.

Both Gomez-Salazar and the government have filed motions for leave to file supplemental briefs. The motions are granted. Appellant in his supplemental brief argues that the Supreme Court in Apprendi v. New Jersey, 120 S. Ct. 2348 (2000) effectively overruled Almendarez-Torres v. United States, 523 U.S. 224 (1998). He argues that if Apprendi undermines Almendarez-Torres, his sentence, which was enhanced pursuant to 8 U.S.C. § 1326(b)(2), is invalid, and he should be resentenced under 8 U.S.C. § 1326(a). Gomez-Salazar acknowledges that this court does not have the authority to overrule Almendarez-Torres and states that he is raising the issue solely to preserve it for possible Supreme Court review. Almendarez-Torres forecloses this argument.

AFFIRMED; BOTH PARTIES' MOTIONS FOR LEAVE TO FILE
SUPPLEMENTAL BRIEFS GRANTED.