

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21091
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALEJANDRO LOZA-LUNA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-315-1

October 29, 2002

Before DeMOSS, BENAVIDES and STEWART, Circuit Judges.

PER CURIAM:*

Alejandro Loza-Luna ("Loza") appeals his conviction and sentence for illegal reentry, in violation of 8 U.S.C. § 1326. He argues, for the first time on appeal, that his sentence was improperly enhanced under § 1326(b)(2) based on his prior felony conviction. Loza contends that his prior aggravated felony conviction was an element of the offense which must have been charged in the indictment following Apprendi v. New Jersey, 530 U.S. 466 (2000), and that § 1326(b), treating the conviction as

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

an enhancement rather than an element of the offense, is unconstitutional.

As Loza concedes, his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998). Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; see also United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 531 U.S. 1202 (2001).

Loza next contends, also for the first time on appeal, that the district court should have suppressed evidence of his prior deportation because his prior administrative deportation proceedings violated due process. As he acknowledges, this argument is similarly foreclosed. See United States v. Benitez-Villafuerte, 186 F.3d 651 (5th Cir. 1999).

Loza has not demonstrated any error in the district court's judgment. Accordingly, the judgment is AFFIRMED.