

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20257
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ASCENCION BAHENA-LAGUNAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-781-1

December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Ascencion Bahena-Lagunas appeals from a 70-month sentence on his conviction for being found in the United States after having been deported in violation of 8 U.S.C. § 1326. Bahena-Lagunas argues that the district court erred in denying his motion to suppress evidence of his prior administrative deportation. Bahena-Lagunas contends the prior deportation proceeding violated his due process rights. Bahena-Lagunas concedes that his argument is foreclosed by United States v. Benitez-Villafuerte,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

186 F.3d 651 (5th Cir. 1999), however he seeks to preserve his arguments for Supreme Court review. In Benitez-Villafuerte, this court held that administrative deportation proceedings under 8 U.S.C. § 1228 comport with due process and that evidence of such deportation proceedings is admissible in a subsequent criminal prosecution under 8 U.S.C. § 1326. 186 F.3d at 654.

Bahena-Lagunas also argues for the first time on appeal that the sentencing provisions of 8 U.S.C. § 1326(b)(1) & (2) are unconstitutional in light of the Supreme Court's holding in Apprendi v. New Jersey, 530 U.S. 466 (2000). Bahena-Lagunas acknowledges that his argument is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review.

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 531 U.S. 1202 (2001). Bahena-Lagunas's argument is foreclosed. The judgment of the district court is AFFIRMED.