

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 02-40272  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUSTINO ALANIZ-GARCIA,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-01-CR-480-1  
-----

March 7, 2003

Before JOLLY, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Justino Alaniz-Garcia pleaded guilty to an indictment charging him with illegal reentry following deportation in violation of 8 U.S.C. § 1326(a) & (b). Alaniz has appealed his sentence.

Alaniz argues that the sentence-enhancing provisions of 8 U.S.C. § 1326(b) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Alaniz concedes that his argument is foreclosed by Almendarez-Torres v. United States, 523

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S. 224 (1998). See United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 531 U.S. 1202 (2001). He seeks to preserve the issue for Supreme Court review.

Alaniz contends also that the district court erred by concluding that his prior conviction for reckless bodily injury to a child, see TEX. PENAL CODE ANN. § 22.04(a)(3) & (f) (West 1994), was a "crime of violence" under U.S.S.G. § 2L1.2(b)(1)(A) (2001). We vacate the sentence and remand for resentencing in light of United States v. Gracia-Cantu, 302 F.3d 308, 310-13 (5th Cir. 2002).

VACATE AND REMAND.