

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20690
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE ALBERTO CANTU-SANCHEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-737-ALL

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Jorge Alberto Cantu-Sanchez was found guilty following a bench trial of being found unlawfully present in the United States after deportation, in violation of 8 U.S.C. § 1326(a). He argues that the indictment should be dismissed under United States v. Mendoza-Lopez, 481 U.S. 828 (1987), because the immigration judge who ordered him deported erred in failing to advise him that he possessed a right to apply for discretionary relief from deportation for which he was eligible to apply. He

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

concedes that his argument is foreclosed by United States v. Lopez-Ortiz, 313 F.3d 225 (5th Cir. 2002), and he raises the claim solely to preserve the issue for further review.

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that an appellee's brief not be required. The motion is GRANTED. The judgment of the district court is AFFIRMED.

AFFIRMED; MOTION GRANTED.