

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8188
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JOSE JESUS TREVIZO-ORTIZ,
a/k/a Adrian Torres-Molina,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(EP-92-399)

(September 21, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

Appellant plead guilty to a violation of 8 U.S.C. § 1326; unlawful reentry into this country by an alien previously convicted of an aggravated felony and deported. Upon indictment, the Government gave notice that it would seek to enhance Appellant's punishment based upon a prior deportation as a result of a prior felony conviction. Following his guilty plea, Defendant moved to dismiss the sentencing enhancement charge contending that

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

subsection (b) of § 1326 is a separate criminal offense; that his prior felony conviction is an element of that offense not charged in this indictment; and, therefore, it was error to sentence under subsection (b).

This precise issue has been decided against Appellant's position by this Court several days ago in United States v. Jose Vasquez-Olvera, No. 92-2706, 1993 WL 319097, *4 (5th Cir. 1993). Accordingly, and for the reasons fully set forth in that opinion, the judgment of the district court is AFFIRMED.