

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8268
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANUEL LORENZO HERNANDEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-92-CR-372-H
- - - - -
(October 28, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Manuel Lorenzo Hernandez was convicted of violating 8 U.S.C. § 1326(a). His sole issue on appeal is whether he was lawfully sentenced pursuant to 8 U.S.C. § 1326(b)(2) without the elements of § 1326(b)(2) having been charged in the indictment. While Hernandez's appeal was pending, this Court decided United States v. Vasquez-Olvera, 999 F.2d 943 (5th Cir. 1993). The Court held

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

that § 1326(b)(2) provides for a sentence enhancement, not a separate offense, and, thus, a defendant may be sentenced under § 1326(b)(2) without its elements having been included in the indictment. Id. at 945.

Accordingly, the judgment of the district court is AFFIRMED.