

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8709  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER DEL HIERRO-VARGAS,  
a/k/a Enrique Romero,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-93-CR-239  
- - - - -

(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Javier Del Hierro-Vargas argues that because (1) deportation following conviction of an aggravated felony is an element of a separate offense defined by subsection (b) of 8 U.S.C. § 1326 and (2) the indictment failed to allege this element, the district court erred in sentencing him to a term of imprisonment in excess of two years, the statutory maximum for re-entry after deportation under § 1326(a).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In United States v. Vasquez-Olvera, 999 F.2d 943, 945-46 (5th Cir. 1993), cert. denied, 114 S.Ct. 889 (1994), Del Hierro-Vargas concedes, "this Court considered the identical legal issue presented by this case, on virtually identical facts," and concluded that subsection (b) of § 1326 was intended by Congress to be a sentence enhancement provision and not a separate criminal offense. Although the defendant requests reconsideration of the issue, only an "overriding Supreme Court decision," a change in statutory law, or this Court sitting en banc may overrule a panel decision. United States v. Zuniga-Salinas, 952 F.2d 876, 877 (5th Cir. 1992) (en banc). This panel may not reconsider the Court's precedent. Accordingly, the district court correctly imposed a sentence in excess of two years based on the sentence enhancement set forth in § 1326(b)(2).

AFFIRMED.