

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40668
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GREGORIO MARTINEZ-CASTRO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-00-CR-93-1

December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:*

Gregorio Martinez-Castro appeals his sentence following his guilty plea conviction for illegal re-entry after deportation in violation of 8 U.S.C. § 1326(a) and (b). Martinez-Castro argues that his prior felony conviction was an element of the offense of the instant conviction that had to be alleged in the indictment. Martinez-Castro acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for possible Supreme Court review in light of Apprendi v. New Jersey, 120 S. Ct. 2348 (2000).

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Martinez-Castro's argument is foreclosed by Almendarez-Torres, 523 U.S. at 235.

AFFIRMED.