

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**November 14, 2005**

**Clerk of Court**

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ADALBERTO MENDOZA-  
MARTINEZ,

Defendant-Appellant.

No. 05-2047

District of New Mexico

(D.C. No. CR-04-1635 JH)

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**ORDER AND JUDGMENT** \*

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Before **HARTZ**, **BARRETT**, and **McCONNELL**, Circuit Judges.

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Defendant-appellant Adalberto Mendoza-Martinez pled guilty to reentry of a deported alien previously convicted of an aggravated felony. In calculating the sentence, pursuant to the United States Sentencing Guidelines as interpreted and

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\*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

revised by *United States v. Booker* , 125 S. Ct. 738 (2005), the district court applied a 16-level sentencing enhancement for a prior conviction for burglary of a habitation, which is deemed to be a crime of violence. The sole issue on appeal is whether the district court may use a prior conviction as the basis for a sentencing enhancement. As the Defendant recognizes in his brief, this issue is controlled by the Supreme Court’s decision in *Almendarez-Torres v. United States* , 523 U.S. 224 (1998). *See United States v. Moore* , 401 F.3d 1220, 1222-24 (10th Cir. 2005) (continuing to apply *Almendarez-Torres* even after *Booker* ). Mr. Mendoza-Martinez raises this issue “in order to preserve it for Supreme Court review.” Appellant’s Br. 5.

The judgment of the United States District Court for the District of New Mexico is **AFFIRMED** .

Entered for the Court,

Michael W. McConnell  
Circuit Judge