

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-40278  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CONRADO GARCIA-CAVAZOS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-99-CR-445-1  
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December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:\*

Conrado Garcia-Cavazos appeals his guilty-plea conviction for attempting to reenter the United States illegally after deportation in violation of 8 U.S.C. § 1326. He argues that in view of the Supreme Court's recent decision in Apprendi v. New Jersey, 120 S. Ct. 2348, 2362-63 (2000), his sentence should be vacated because it exceeds the two-year statutory maximum sentence for a violation of 8 U.S.C. § 1326(a). Garcia-Cavazos acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), and states that he is

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

raising the issue to preserve it for possible Supreme Court review. Although the Supreme Court noted that Almendarez-Torres may have been incorrectly decided, the Supreme Court did not expressly overrule it in Apprendi. Apprendi, 120 S. Ct. at 2362 & n.15. Garcia-Cavazos's argument is foreclosed by Almendarez-Torres.

AFFIRMED.