

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-50621  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARTHA GUTIERREZ-GUTIERREZ, also known  
as Yadira Martinez, also known as Dora  
Hernandez-Abeytia,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-99-CR-1662-1-F  
- - - - -

February 15, 2001

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

PER CURIAM:\*

Martha Gutierrez-Gutierrez appeals her sentence following her guilty plea conviction for illegal re-entry after deportation in violation of 8 U.S.C. § 1326. Gutierrez argues that her sentence should not have exceeded the two-year maximum sentence under 8 U.S.C. § 1326(a). Gutierrez acknowledges that her argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but she seeks to preserve the issue for Supreme

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Court review in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

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

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that the judgment of the district court be affirmed and that an appellee's brief not be required. The motion is granted.

AFFIRMED; MOTION GRANTED.