

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-51127  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIO ALBERTO CIRIZA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-99-CR-1066-2-DB  
- - - - -

August 23, 2001

Before KING, Chief Judge, and POLITZ and PARKER, Circuit Judges.

PER CURIAM:\*

Mario Alberto Ciriza challenges his conviction and 70-month sentence following his plea of guilty to illegal re-entry into the United States after deportation, a violation of 8 U.S.C. § 1326. Ciriza argues that the felony conviction that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) was an element of the offense that should have been charged in his indictment. He also argues that the district court violated his due process rights by imposing a sentence greater than the two-year maximum sentence permissible under 8 U.S.C. § 1326 given

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that the Government did not plead Ciriza's prior aggravated felony in the indictment.

Ciriza acknowledges that his arguments are foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issues for Supreme Court review in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; see also United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). Ciriza's argument is foreclosed. See Almendarez-Torres, 523 U.S. at 235.

AFFIRMED.