

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-50675  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID CARO-GRIMALDO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-02-CR-232-ALL-DB  
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February 20, 2003

Before WIENER, EMILIO M. GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:\*

David Caro-Grimaldo appeals the sentence imposed following his guilty plea conviction of illegal reentry into the United States after deportation. He argues that the district court erroneously enhanced his sentence by eight levels by categorizing his prior felony conviction for possession of a controlled substance as an aggravated felony under the 2001 version of Sentencing Guidelines § 2L1.2(b)(1)(C). Caro argues that he should have received only the four-level adjustment provided

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

in § 2L1.2(b)(1)(D) for "any other felony." Caro's arguments were recently rejected by this court in United States v. Caicedo-Cuero, 312 F.3d 697, 706-11 (5th Cir. 2002).

Caro also contends that the sentence-enhancing provisions contained in 8 U.S.C. § 1326(b) are facially unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Caro acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but seeks to preserve the issue for further review.

AFFIRMED.