

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-40969  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MANUEL CORPUS-DE LA RIVA,  
also known as Manuel Corpus Corpus,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-00-CR-420-1  
- - - - -

August 23, 2001

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

PER CURIAM:\*

Manuel Corpus de la Riva ("Corpus") appeals the conviction and sentence for illegal reentry into the United States in violation of 8 U.S.C. § 1326(a), (b)(2). He contends 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 the indictment.

Corpus acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

seeks to preserve the issue 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 490-91; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). This argument fails.

Corpus also argues that his indictment was defective under the Fifth and Sixth Amendments because it did not allege general intent. This argument is foreclosed by this court's recent decision in United States v. Berrios-Centeno, 250 F.3d 294 (5th Cir. 2001). The indictment fairly conveyed that Corpus' presence was a voluntary act from the allegations that he was excluded, deported, or removed, and that he had subsequently been found in the United States without consent of the Attorney General. Id. at 299-300.

The judgment of the district court is AFFIRMED.