

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-41206
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PRIMITIVO JUAN CARRIZALES-CEDILLO,
also known as Juan Carrizales-Cedillo,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(B-99-CR-224-1)

July 19, 2000

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:*

Primitivo Juan Carrizales-Cedillo contends that his guilty plea should be vacated because it was involuntarily entered. The Government agrees, concluding the case should be remanded to permit Carrizales to enter a new plea.

Because Carrizales raised this issue for the first time on appeal, we review only for plain error. ***United States v. Angeles-Mascote***, 206 F.3d 529, 530 (5th Cir. 2000). To demonstrate

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

such error, he must show "clear" or "obvious" error that affects his substantial rights; if he does, we have discretion to correct a forfeited error that seriously affects the fairness, integrity, or public reputation of judicial proceedings. *E.g., United States v. Calverley*, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc) (citing *United States v. Olano*, 507 U.S. 725, 730-35 (1993)).

At the time Carrizales entered his guilty plea, this court had not yet determined whether the offense of illegal transportation of aliens is an aggravated felony for purposes of 8 U.S.C. § 1326(b). In the plea agreement, the parties stipulated that Carrizales' prior conviction for illegal transportation of aliens was *not* an aggravated felony; accordingly, the magistrate judge advised Carrizales at the rearraignment that he could be sentenced to a term of imprisonment of up to *two years*.

However, the district court, having adopted the magistrate judge's recommendation that it accept the guilty plea, sentenced Carrizales to a *46-month* term of imprisonment, pursuant to this court's intervening decision in *United States v. Monjaras-Castaneda*, 190 F.3d 326, 331 (5th Cir. 1999), *cert. denied*, 120 S. Ct. 1254 (2000) (illegal transportation of aliens constitutes aggravated felony).

The acceptance of Carrizales' guilty plea involved a clear or obvious error that, obviously, affects his substantial rights and also seriously affects the fairness, integrity, or public

reputation of judicial proceedings. Accordingly, the judgment is **VACATED** and the case **REMANDED** for further proceedings.

VACATED AND REMANDED