

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-41464  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE GABRIEL ORTIZ RAMIREZ, also known as Francisco Capdsan,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-00-CR-291-1  
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December 12, 2001

Before HIGGINGBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:\*

Jose Gabriel Ortiz Ramirez pleaded guilty to an indictment charging him for being an alien found unlawfully in the United States following deportation. Ramirez has appealed his sentence.

Ramirez's sentence was enhanced pursuant to 8 U.S.C. § 1326(b)(2) because he was convicted for an aggravated felony prior to his deportation. Ramirez contends that the prior felony conviction was an element of the offense that should have been charged in the indictment. Ramirez acknowledges that his argument is foreclosed by the Supreme Court's decision in 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 further review in light of Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001).

AFFIRMED.