

June 22, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-50913  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELIUD CRUZ-GONZALEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:04-CR-92-ALL  
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Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Eliud Cruz-Gonzalez pleaded guilty to an indictment charging him with illegal reentry following deportation. Cruz was sentenced to an 84-month term of imprisonment and to a three-year period of supervised release. Cruz has appealed his sentence.

Cruz contends for the first time on appeal that, under United States v. Booker, 125 S. Ct. 738 (2005), the district court erred by imposing sentence under mandatory sentencing guidelines. We review this issue for plain error. See United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States v. Valenzuela-Quevado, 407 F.3d 728, 732 (5th Cir. 2005). Cruz has not carried his burden of showing that his substantial rights were affected. See United States v. Mares, 402 F.3d 511, 521-22 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005) (No. 04-9517).

Cruz contends that, in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), his sentence violated due process because it exceeded the maximum imprisonment and supervised-release terms for the offense charged in the indictment. Cruz concedes that this issue is foreclosed under Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). He raises the issue to preserve it for further review. The judgment is

AFFIRMED.