

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-3532

United States of America,

Appellee,

v.

Luis Santiago Ramirez-Gil,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: March 20, 2001

Filed: March 30, 2001

Before BOWMAN, BEAM, and LOKEN, Circuit Judges.

PER CURIAM.

Luis Santiago Ramirez-Gil pleaded guilty to illegally re-entering the United States after deportation, in violation of 8 U.S.C. § 1326(a). His sentence was enhanced under 8 U.S.C. § 1326(b)(2) and U.S.S.G. § 2L1.2(b)(1)(A) because he had previously been deported after being convicted of an aggravated felony. The District Court¹ sentenced him to 46 months imprisonment and 3 years supervised release.

¹The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.

Ramirez-Gil argues that Apprendi v. New Jersey, 120 S. Ct. 2348 (2000), required the government to charge the fact of his prior aggravated-felony conviction in the indictment. Apprendi, Ramirez-Gil argues, overruled Almendarez-Torres v. United States, 523 U.S. 224 (1998), which had held that an earlier aggravated-felony conviction is a sentencing factor under 8 U.S.C. § 1326(b) that need not be charged as an element of the offense. Apprendi, however, held that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt." 120 S. Ct. at 2362-63 (emphasis added). The Apprendi Court also explicitly declined to overrule Almendarez-Torres. Id. at 2362. Likewise, we decline to read Apprendi as disturbing the holding of Almendarez-Torres. See United States v. Rush, 240 F.3d 729, 731 (8th Cir. 2001) (noting that Apprendi does not apply to fact of prior conviction); United States v. Aguayo-Delgado, 220 F.3d 926, 932 n.4 (8th Cir.) ("In Apprendi, the Court left Almendarez-Torres untouched"), cert. denied, 121 S. Ct. 600 (2000)).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.