

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-3832

United States of America,

Appellee,

v.

Luis Yair Gutierrez-Lopez,

Appellant.

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Appeal from the United States
District Court for the
District of Nebraska.
[UNPUBLISHED]

Submitted: March 16, 2001

Filed: March 21, 2001

Before HANSEN, MORRIS SHEPPARD ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Luis Yair Gutierrez-Lopez 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 78 months imprisonment and 3 years supervised release.

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

Gutierrez-Lopez argues on appeal that because the fact of a prior aggravated-felony conviction was not alleged in the indictment and was neither proven to a jury nor admitted through his guilty plea, the enhanced sentence violates the standards announced in Apprendi v. New Jersey, 120 S. Ct. 2348 (2000). We reject this argument because Almendarez-Torres v. United States, 523 U.S. 224, 226 (1998), which upheld the validity of the section 1326(b)(2) aggravated-felony enhancement for section 1326(a) violators, was not overruled by Apprendi. See 120 S. Ct. at 2362; United States v. Aguayo-Delgado, 220 F.3d 926, 932 n.4 (8th Cir.) (“In Apprendi, the Court left Almendarez-Torres untouched, although . . . [it] expressed a willingness to reconsider it.”), cert. denied, 121 S. Ct. 600 (2000). Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

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