

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-20869  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARMANDO MACIN-HERRERA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-00-CR-359-1  
- - - - -

June 15, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:\*

Armando Macin-Herrera (Macin) appeals his conviction and sentence following a guilty plea for illegal reentry following a deportation. See 8 U.S.C. § 1326. Macin argues that (1) he should have received only a two-year sentence, because the indictment failed to allege as an element of the offense that he was an aggravated felon; and (2) the indictment was defective because it failed to allege a general intent mens rea.

Macin acknowledges that his first argument is foreclosed by the Supreme Court's decision in *Almendarez-Torres v. 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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*, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review in light of the decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Apprendi* did not overrule *Almendarez-Torres*. See *Apprendi*, 530 U.S. at 487-90; *United States v. Dabeit*, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). Macin's argument is foreclosed.

Macin challenges the alleged mens rea omission for the first time on appeal. This court has upheld the sufficiency of an indictment that contained substantially identical language to Macin's indictment. See *United States v. Guzman-Ocampo*, 236 F.3d 233, 239 n.13 (5th Cir. 2000). Accordingly, this argument is foreclosed as well. Macin's conviction and sentence are AFFIRMED.