

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40896
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUADALUPE LANDEROS-TEJEDA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-00-CR-100-1
- - - - -

March 27, 2001

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Guadalupe Landeros-Tejeda ("Landeros") appeals his guilty plea conviction and sentence for illegal reentry into the United States by a previously deported alien in violation of 8 U.S.C. § 1326. Landeros argues that: (1) his pre-deportation aggravated felony conviction, which resulted in his increased sentence under 8 U.S.C. § 1326(b)(2), was an element of the offense that should have been charged in his indictment and (2) his indictment was insufficient because it failed to allege general intent or any mens rea.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Landeros acknowledges that his first argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 247 (1998), but he seeks to preserve the issue for possible Supreme Court review in light of Apprendi v. New Jersey, 530 U.S. 466, ___, 120 S. Ct. 2348, 2362 & n.15 (2000). While the Apprendi court acknowledged that Almendarez-Torres may have been incorrectly decided, it did not overrule Almendarez-Torres. See Apprendi, 120 S. Ct. at 2362 & n.15; see also United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 2001 U.S. App. Lexis 1889 (Feb. 26, 2001). Landeros' argument is thus foreclosed by the Supreme Court's decision in Almendarez-Torres, 523 U.S. at 235, which this court is compelled to follow. See Dabeit, 231 F.3d at 984.

With respect to Landeros' second argument, this court's recent decision in United States v. Guzman-Ocampo, 236 F.3d 233 (5th Cir. 2000), is dispositive. Landeros' indictment alleged every statutorily required element of 8 U.S.C. § 1326 and fairly imported that his reentry was a voluntary act in view of the allegations that he had been deported and removed and that he was present without having obtained the Attorney General's consent. Since Landeros failed to challenge the voluntariness of his entry, his indictment was statutorily sufficient. See Guzman-Ocampo, 236 F.3d at 239.

The district court's judgment is AFFIRMED.