

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-40143  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR FRANCISCO HERAS-JIMENEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-01-CR-691  
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December 12, 2002

Before JOLLY, JONES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Oscar Francisco Heras-Jimenez ("Heras") pleaded guilty to possession with intent to distribute more than one hundred kilograms of marijuana in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). Heras contends that 21 U.S.C. § 841 is unconstitutional in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466, 488 (2000). Heras acknowledges that his argument is foreclosed by this court's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

precedent, United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000), but he seeks to preserve the issue for Supreme Court review.

Heras's argument is foreclosed. Slaughter, 238 F.3d at 582; see United States v. Fort, 248 F.3d 475, 482-83 (5th Cir.), cert. denied, 122 S. Ct. 405 (2001). Accordingly, the district court's judgment is AFFIRMED.