

August 17, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-41032  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HECTOR MARTINEZ-HERNANDEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:04-CR-40-1  
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Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:\*

Hector Martinez-Hernandez ("Martinez") appeals his conviction for possession with intent to distribute less than 50 kilograms of marijuana, a violation of 21 U.S.C. § 841.

Martinez's sole argument on appeal is that a Border Patrol agent lacks authority to conduct a vehicle stop based on a reasonable suspicion of a non-immigration offense. This argument is foreclosed by our decision in United States v. Perkins, 352 F.3d 198 (5th Cir. 2003), cert. denied, 541 U.S. 980 (2004).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Martinez concedes that the issue is foreclosed, but he raises it to preserve the matter for further review.

The judgment of the district court is AFFIRMED.