

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40472
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FELIPE DE JESUS RAMIREZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-01-CR-1059-ALL

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Felipe de Jesus Ramirez appeals his guilty-plea conviction and sentence for possession with intent to distribute in excess of 100 kilograms of marijuana. He argues that: 1) 21 U.S.C. § 841 is facially unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000); and 2) 21 U.S.C. §§ 841(b) and 851 are unconstitutional in light of Apprendi. Ramirez concedes that his arguments are foreclosed by United States v. Slaughter,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

238 F.3d 580, 582 (5th Cir. 2000) and Almendarez-Torres v. United States, 523 U.S. 224, 235-47 (1998), respectively.

Apprendi held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” 530 U.S. at 490. This court has specifically rejected the argument that Apprendi rendered 21 U.S.C. § 841 facially unconstitutional. See Slaughter, 238 F.3d at 582. Accordingly, Ramirez’ challenge to the constitutionality of 21 U.S.C. § 841 is without merit.

Furthermore, Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 490; see also United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). This court, therefore, must follow Almendarez-Torres “unless and until the Supreme Court itself determines to overrule it.” Dabeit, 231 F.3d at 984 (internal quotation and citation omitted). Accordingly, Ramirez’ challenge to the constitutionality of 21 U.S.C. §§ 841(b) and 851 is without merit.

AFFIRMED.