

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40204
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HECTOR RAMOS-MENDIOLA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-1287-1

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Hector Ramos-Mendiola (Ramos) appeals his conviction and sentence following his guilty plea to possession of more than 100 kilograms of marijuana with intent to distribute. Ramos argues for the first time on appeal that the district court abused its discretion when it imposed a condition of supervised release that requires him to cooperate in the collection of his DNA. Ramos's claim is not ripe for review. See United States v. Riascos-Cuenu, 428 F.3d 1100, 1101-02 (5th Cir. 2005), petition

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

for cert. filed (Jan. 9, 2006) (No. 05-8662). Therefore, this court lacks jurisdiction to review this claim, and this portion of the appeal is dismissed.

Ramos correctly notes that his argument, made for the first time on appeal, that the district court lacked jurisdiction to convict and sentence him because 21 U.S.C. § 841 is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000), is foreclosed by United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). Ramos's conviction is affirmed.

JUDGMENT AFFIRMED; APPEAL DISMISSED IN PART.