

June 25, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 02-41221  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GABRIEL ASTORGA-RAMIREZ,  
also known as Gabriel Astorga-Ramirez,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-98-CR-1076-ALL  
-----

Before DeMOSS, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Gabriel Astorga-Ramirez ("Astorga") appeals the revocation of supervised release on his conviction for possession with the intent to distribute marihuana. Astorga seeks to challenge the constitutionality of 21 U.S.C. § 841(a) and (b) in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Because a challenge under Apprendi is not jurisdictional, he may not present this claim in an appeal following the revocation of supervised release. See United States v. Moody, 277 F.3d 719, 720-21

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. 2001). Moreover, as Astorga concedes, his Apprendi argument is foreclosed by United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). The judgment of the district court is AFFIRMED.