

FILED

December 10, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10194
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER GUADALUPE AGUILAR,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:00-CR-260-6-Y

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Javier Guadalupe Aguilar appeals his guilty-plea conviction and sentence for conspiracy to distribute more than 100 kilograms of marijuana. Aguilar challenges the constitutionality of 21 U.S.C. § 841 and argues that the Supreme Court's decision in Harris v. United States, 536 U.S. 545, 556 (2002), calls into question United States v. Slaughter, 238 F.3d 580 (5th Cir. 2000), cert. denied, 532 U.S. 1045 (2001), in which this court upheld the constitutionality of 21 U.S.C. § 841. In Harris, the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Supreme Court upheld a federal statute that permitted a judge to determine the presence or absence of a factor required for determination of the applicable statutory minimum sentence. 536 U.S. at 568. In Harris, the Supreme Court did not consider the constitutionality of 21 U.S.C. § 841 or expressly reject this court's view of 21 U.S.C. § 841 in Slaughter. One panel of this court may not overrule the decision of another absent an intervening decision to the contrary by the Supreme Court or the en banc court. See Hogue v. Johnson, 131 F.3d 466, 491 (5th Cir. 1997). Because Slaughter has not been overruled and is still binding precedent in this circuit, Aguilar's argument is foreclosed. The district court's judgment is AFFIRMED. The Government's motion for summary affirmance is GRANTED.