

**FILED**

June 23, 2004

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III  
Clerk

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No. 03-51241  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE MARIA BUITRON-GARCIA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. P-03-CR-128-1  
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Before BARKSDALE, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Jose Maria Buitron-Garcia appeals his guilty plea conviction for possession with intent to distribute 100 kilograms or more, but not less than 1,000 kilograms, of marihuana. He argues that the sentencing provision of 21 U.S.C. § 841(b)(1)(B) is unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). Buitron-Garcia concedes that his argument is foreclosed by our opinion in United States v. Slaughter, 238 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

580, 581-82 (5th Cir. 2000). He raises the issue only to preserve it for Supreme Court review.

A panel of this court cannot overrule a prior panel's decision in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the United States Supreme Court. Burge v. Parish of St. Tammany, 187 F.3d 452, 466 (5th Cir. 1999). No such decision overruling Slaughter exists. Accordingly, Buitron-Garcia's argument is foreclosed, and the judgment of the district court is AFFIRMED.

The Government has moved for a summary affirmance in lieu of filing an appellee's brief. In its motion, the Government asks that an appellee's brief not be required. The motion is GRANTED.

AFFIRMED; MOTION GRANTED.