

June 29, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-20577  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS PEREZ-RAMIREZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:04-CR-9-2  
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Before SMITH, GARZA, and PRADO, Circuit Judges.

PER CURIAM:\*

Jesus Perez-Ramirez (Perez) appeals his conviction for possession with intent to distribute cocaine, aiding and abetting. For the first time on appeal, Perez argues that 21 U.S.C. § 841, the statute of conviction, is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). Perez's appeal waiver does not bar review of this issue because he did not waive his right to appeal his conviction.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Perez acknowledges that the constitutional challenge is foreclosed by United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000), and that he is raising the issue to preserve it for Supreme Court review.

AFFIRMED.