

October 5, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-51449
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR FRANCO-MUNOZ, also
known as Cesar Franco,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:05-CR-652-ALL

Before JONES, Chief Judge, and SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Oscar Franco-Munoz raises arguments that are foreclosed by United States v. Hinojosa-Lopez, 130 F.3d 691, 694 (5th Cir. 1997), which held that a Texas felony conviction for possession of marijuana was an "aggravated felony" under § 2L1.2(b) of the Sentencing Guidelines, and by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

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Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.