

October 25, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40104
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIGUEL A. FLORES-ALVARADO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-567-ALL

Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Miguel A. Flores-Alvarado (Flores) appeals his guilty-plea conviction and sentence for importing into the United States from Mexico approximately 9.29 kilograms of cocaine, in violation of 21 U.S.C. §§ 952(a), 960(a)(1), and 960(b)(1)(B) and 18 U.S.C. § 2. Flores raises only one argument in this court. For the first time on appeal, he contends that 21 U.S.C. §§ 952 and 960(a) and (b) are facially unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000), because drug quantity is an element of the offense that must be presented to the trier of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

fact. As Flores acknowledges, this argument is foreclosed by this court's precedent. See United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000).

AFFIRMED.