

March 7, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40875
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AGAPITO HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:04-CR-459

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Agapito Hernandez raises arguments that are foreclosed by United States v. Slaughter, 238 F.3d 580, 582-84 (5th Cir. 2000), which held that Apprendi v. New Jersey, 530 U.S. 466 (2000), did not render 21 U.S.C. § 841 unconstitutional on its face. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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