

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 4, 2008

\_\_\_\_\_  
No. 08-50502  
Conference Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

RUBEN ESPINOZA, JR

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:07-CR-262-1  
\_\_\_\_\_

Before GARWOOD, GARZA, and OWEN, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Ruben Espinoza, Jr., raises arguments that he concedes are foreclosed by *United States v. Keith*, 230 F.3d 784, 787 (5th Cir. 2000), which held that *Apprendi v. New Jersey*, 530 U.S. 466 (2000) does not preclude the imposition of a mandatory minimum sentence under 21 U.S.C. § 841, provided that the sentence imposed does not exceed the statutory maximum sentence for the offense. See also *United States v. Harper*, 527 F.3d 396, 411 (5th Cir.) (except in the case of substantial assistance to the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Government or compliance with the safety valve criteria, sentencing courts, post United States v. Booker, 543 U.S. 220 (2005), lack discretion to depart below relevant statutory minimums), cert. denied, 129 S. Ct. 212 (2008). The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.