

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20660
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN ANTONIO ANDRADE,

Defendant-Appellant.

Appeal from the United States District Court for
the Southern District of Texas
(CA-H-94-227-1)

March 20, 1997

Before REAVLEY, BARKSDALE and DENNIS, Circuit Judges.

PER CURIAM:*

The judgment of the district court is affirmed. The only issue before the district court at this time was the effect of Bailey v. United States, 116 S.Ct. 501 (1995) upon the conviction for violation of 18 U.S.C. § 924(c)(1). The present appeal goes beyond that issue and the prior mandate of this court. Because it was outside that scope, the present argument has been waived.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

If we were to consider the argument of the unconstitutionality of § 922(g)(5), we would reject it. Appellant may agree with the dissent of Judge DeMoss in United States v. Kuban, 94 F.3d 971 (5th Cir. 1996) but that is not the law of the circuit as explained by the majority opinion.

AFFIRMED.