

June 21, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-41471  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GERARDO LIEVANOS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:05-CR-254-1  
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Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Gerardo Lievanos appeals his guilty-plea conviction of possession with intent to distribute more than 500 grams of cocaine. Lievanos argues, for the first time on appeal, that the district court lacked jurisdiction to convict and sentence him because 21 U.S.C. § 841 is unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000). Lievanos correctly concedes that his arguments are foreclosed by our opinion in United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). He raises the issue to preserve it for further review.

AFFIRMED.