

June 21, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-41474  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DERLY DE LA GARZA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:05-CR-289-ALL  
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Before STEWART, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Derly De La Garza appeals from his guilty plea conviction for possession with intent to distribute 8.84 grams of cocaine base. De La Garza correctly notes that his argument, made 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), is foreclosed by United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). The judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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