# IN THE UNITED STATES COURT OF APPEALS
# FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

**FILED**
March 27, 2009

Charles R. Fulbruge III
Clerk

No. 08-20358
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JULIO CESAR RODRIGUEZ-DUBERNEY, also known as Julio Cesar Duverney-Rodriguez, also known as Homereo Carmanno Rodriguez, also known as Julio Cesar Rodriguez, also known as Julio Cesar Rodriguez-Duberny

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:07-CR-283-ALL

Before WIENER, STEWART, AND CLEMENT, Circuit Judges.

PER CURIAM:[*]

Defendant-Appellant Julio Cesar Rodriguez-Duberney pleaded guilty to illegal reentry after deportation. On appeal, Rodriguez-Duberney challenges the district court's characterization of his prior conviction under the Travel Act, 18 U.S.C. § 1952, as a drug trafficking offense for sentencing purposes. In *United States v. Rodriguez-Duberney*, 326 F.3d 613, 616-18 (5th Cir. 2003), we held that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Rodriguez-Duberney's prior conviction warranted a 16-level enhancement under U.S.S.G. § 2L1.2. Rodriguez-Duberney asserts that this prior decision is flawed because we relied upon the charge alleged in a dismissed indictment rather than the information to which he pleaded guilty. He also maintains that the ruling in *Rodriguez-Duberney* has been called into question by subsequent case law holding that transportation of narcotics does not generally constitute a drug trafficking offense. A panel of this court may not overrule a prior panel's decision in the absence of intervening contrary or superseding authority. *United States v. Rodriguez-Jaimes*, 481 F.3d 283, 288 (5th Cir. 2007).

The government's motion for summary affirmance is GRANTED, and its alternative motion for an extension of time to file a brief is DENIED. The judgment of the district court is

AFFIRMED.