

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

United States Court of Appeals
Fifth Circuit

FILED

June 19, 2012

Lyle W. Cayce
Clerk

No. 11-50782
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BENJAMIN WHIPPLE, JR., also known as Benjamin Whipple,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:08-CR-2396-1

Before DAVIS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Benjamin Whipple, Jr., raises an argument that he concedes is foreclosed by *United States v. Slaughter*, 238 F.3d 580 (5th Cir. 2000), which rejected a challenge based on the reasoning of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), to the constitutionality of 21 U.S.C. § 841(b). The Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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