

December 12, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41540
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GRACIELLA LOPEZ-RAMIREZ, also known as Gracie Ramirez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:05-CR-60

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Graciella Lopez-Ramirez (Lopez) appeals her conviction and sentence following her guilty plea to possession of marijuana with intent to distribute in violation of 21 U.S.C. § 841. Lopez argues for the first time on appeal that the holding in Apprendi v. New Jersey, 530 U.S. 466 (2000), renders § 841(a) & (b) facially unconstitutional because Congress intended drug quantity and type to be a sentencing factor and the statute cannot be rewritten by the courts to correct the alleged unconstitutionality simply by treating drug quantity and type as

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

elements of the offense. She correctly concedes that this issue is foreclosed by United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000). She raises it only to preserve further review by the Supreme Court. We are bound by our precedent absent an intervening Supreme Court decision or a subsequent en banc decision. United States v. Short, 181 F.3d 620, 624 (5th Cir. 1999).

AFFIRMED.