

February 14, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-40605  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANGELICA LISNEROS-GUERRERO, true name Angelica Lineros-Gerrero,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:05-CR-2305-ALL  
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Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Angelica Lisneros-Guerrero (Lisneros) appeals her conviction and sentence following her guilty plea to possession with intent to distribute over five kilograms of cocaine in violation of 21 U.S.C. § 841. Lisneros 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

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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.