

January 6, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 02-41552  
Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELISA BARRON-IRACHETA,

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-02-CR-221-1

---

Before JONES, BENAVIDES and CLEMENT, Circuit Judges.

PER CURIAM:\*

Elisa Barron-Iracheta (Barron) appeals following her jury-trial conviction and sentence for possession with intent to distribute less than 50 kilograms of marijuana and a related conspiracy count. She contends that the Government improperly adduced and commented at trial on evidence of her silence and calm demeanor manifested prior to her being advised of her rights under

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Miranda v. Arizona, 384 U.S. 436 (1966). Barron did not object at trial, and she fails to show that there was any plain or obvious error that affected her substantial rights with regard to the evidence or the Government's comment upon it. See United States v. Garcia-Flores, 246 F.3d 451, 457 (5th Cir. 2001); see also Fletcher v. Weir, 455 U.S. 603, 606-07 (1982); United States v. Musquiz, 45 F.3d 927, 930 (5th Cir. 1995).

Barron asserts that 21 U.S.C. § 841 is unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Barron concedes that her claim is foreclosed by United States v. Slaughter, 238 F.3d 580 (5th Cir. 2000). She raises the issue only to preserve it for Supreme Court review.

Barron's conviction and sentence are **AFFIRMED**.