

United States Court of Appeals
Fifth Circuit**FILED**

December 12, 2006

Charles R. Fulbruge III
ClerkIN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40358
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GABRIEL ANTONIO BLANCO-LOBO, also known as Sergio Alberto Lopez-
Cansino,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-710-2

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Gabriel Antonio Blanco-Lobo (Blanco) appeals his guilty-plea conviction and sentence for possession with intent to distribute more than 100 kilograms but less than 1,000 kilograms of marijuana. For the first time on appeal, Blanco contends that 21 U.S.C. § 841(a) and (b) are facially unconstitutional under Apprendi v. New Jersey, 530 U.S. 466 (2000), because drug type and quantity are elements of the offense that must be presented to the trier of fact. As Blanco acknowledges, this argument is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

foreclosed by this court's precedent. See United States v. Slaughter, 238 F.3d 580, 582 (5th Cir. 2000).

AFFIRMED.