

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-50179  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OCTAVIO MORALES-ORTIZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-97-CR-847-ALL-H  
- - - - -

October 21, 1998

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:\*

Octavio Morales-Ortiz ("Morales") has appealed the sentence imposed following his conviction for attempting to reenter the United States illegally following deportation. Morales contends that his state-court marijuana-possession conviction was not a "drug trafficking crime," under 18 U.S.C. § 924(c)(2) and did not constitute an "aggravated felony" for purposes of U.S.S.G. § 2L1.2(b)(1)(A). Accordingly, Morales argues, the district court erred in adjusting his offense level upward by 16 levels pursuant to § 2L1.2(b)(1)(A). Morales concedes that the court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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resolved this issue to the contrary in United States v. Hinojosa-Lopez, 130 F.3d 691, 693-94 (5th Cir. 1997). Because the appeal is frivolous, it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.

APPEAL DISMISSED.