

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 24, 2007

No. 06-41769
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JAVIER PINEDA-GONZALEZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:06-CR-415-4

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Javier Pineda-Gonzalez appeals from his conviction of conspiring to transport undocumented aliens within the United States. He contends that he was entitled to a downward adjustment to his guideline offense level for minor participation and acceptance of responsibility.

The presentence report indicated that Pineda-Gonzalez was a brush guide who helped conduct a group of 15 undocumented aliens into the country on a hike that lasted three days and three nights. He was in the cab of the pickup

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

used to transport the aliens when it was stopped. One alien saw Pineda-Gonzalez speaking on a cell phone while in the pickup, and Pineda-Gonzalez had the telephone number of coconspirator Arturo Garcia-Gonzalez in his wallet. Pineda-Gonzalez was held accountable only for the aliens transported in the pickup truck on May 18, 2006. As to that criminal episode, the district court's finding that he was not a minor participant is not clearly erroneous. See *United States v. Garcia*, 242 F.3d 593, 598 (5th Cir. 2001); *United States v. Valencia*, 44 F.3d 269, 272 (5th Cir. 1995).

Pineda-Gonzalez pleaded guilty after his trial had been underway for two days. The district court's determination that Pineda-Gonzalez had not accepted responsibility for his offense was not without foundation. See *United States v. Sanchez-Ruedas*, 452 F.3d 409, 414 (5th Cir.), cert. denied, 127 S. Ct. 315 (2006).

AFFIRMED.