

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20554

Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS VASQUEZ-INIGEZ

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
USDC No. H-00-CR-57-1

October 10, 2001

ON PETITION FOR REHEARING

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.*

Vasquez-Iniguez filed a petition for a panel rehearing of our opinion affirming his conviction for illegal reentry after deportation, arguing that his sentence was improperly enhanced based upon his prior conviction for driving while intoxicated.

Vasquez-Iniguez's offense level was increased by 16 levels because his previous conviction was considered an aggravated felony, based upon a previous decision of this Court that was later

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

withdrawn. After the parties had submitted their briefs but before we affirmed Vasquez-Iniguez's conviction, this Court held in *United States v. Chapa-Garza*¹ that driving while intoxicated is not an aggravated felony under Section 2L1.2(b).² Accordingly, his petition for rehearing is GRANTED, his sentence is VACATED, and his case is REMANDED for sentencing in accordance with *Chapa-Garza*.

¹ 243 F.3d 921 (5th Cir. 2001).

² *Id.* at 927.