

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20260
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MELCHOR ALCANTAR-VARGAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CR-716-ALL

October 29, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Melchor Alcantar-Vargas appeals his sentence following his guilty-plea conviction for illegally reentering the United States after having been previously deported subsequent to an aggravated-felony conviction, in violation of 8 U.S.C. § 1326. Alcantar-Vargas argues that the district court erred in applying U.S.S.G. § 2L1.2(b)(1)(A) because the rule of lenity required the court to interpret the term "drug trafficking crime" to exclude his state court conviction for possession of cocaine. Alcantar-Vargas concedes that his argument is foreclosed by this court's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

precedent, but nevertheless seeks to preserve the issue for further Supreme Court review.

As acknowledged by Alcantar-Vargas, his argument on appeal is foreclosed by this court's holdings in United States v. Hernandez-Avalos, 251 F.3d 505, 508 (5th Cir. 2001), cert. denied, ___ U.S. ___, 2001 WL 992061 (U.S. Oct. 1, 2001) (No. 01-5773); United States v. Hinojosa-Lopez, 130 F.3d 691, 694 (5th Cir. 1997). Accordingly, his sentence is AFFIRMED.