

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-20273  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DOMINGO RODRIGUEZ-NUNEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-00-CR-746-ALL  
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October 29, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Domingo Rodriguez-Nunez appeals his sentence from his guilty-plea conviction for being found illegally in the United States. See 8 U.S.C. § 1326(a), (b). He argues that the district court erred in applying a 16-level "aggravated felony" increase, pursuant to U.S.S.G. § 2L1.2(b)(1)(A), because the rule of lenity requires the court to interpret the term "drug trafficking crime" under the guideline and the relevant statutes to exclude his state felony conviction for possession of a controlled substance. Rodriguez-Nunez acknowledges that his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

argument is foreclosed by this court's decision in United States v. Hinojosa-Lopez, 130 F.3d 691, 693-94 (5th Cir. 1997). He seeks to preserve the issue for possible review by the Supreme Court.

The district court did not err in applying U.S.S.G. § 2L1.2(b)(1)(A). Hinojosa-Lopez, 130 F.3d at 693-94; see United States v. Hernandez-Avalos, 251 F.3d 505, 508-09 (5th Cir. 2001), cert. denied, (U.S. Oct. 1, 2001) (No. 01-5773).

AFFIRMED.