

August 26, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-20012
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ENRIQUE BALTAZAR-GONZALEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-323-1

Before HIGGINBOTHAM, DAVIS and PRADO, Circuit Judges.

PER CURIAM:*

Enrique Baltazar-Gonzalez, who pleaded guilty to the transportation of illegal aliens, appeals the increase of his offense level under U.S.S.G. § 2L1.1(b)(5). Baltazar's offense involved him driving a car with one alien riding in the front passenger seat, three aliens riding in the back seat, and two aliens riding in the trunk. Although the vehicle's back seat could be folded down to allow more room in the trunk, the district court's determination that the aliens in the trunk would

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not have been able to fold down the back seat, on which three passengers sat, was not clear error.

We uphold the application of U.S.S.G. § 2L1.1(b)(5) to Baltazar's case. See U.S.S.G. § 2L1.1, comment. (n.6); United States v. Garcia-Guerrero, 313 F.3d 892, 895 (5th Cir. 2002); United States v. Cuyler, 298 F.3d 387, 390-91 (5th Cir. 2002).

AFFIRMED.