

August 20, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40149  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE BECERRA-RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-02-CR-474-1  
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Before JONES, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Jose Becerra-Rodriguez appeals the sentence he received after he pleaded guilty to being an alien unlawfully present in the United States subsequent to deportation following conviction for an aggravated felony. The prior felony conviction involved the transportation of aliens, and the district court used it to increase Rodriguez's base offense level.

Rodriguez argues that the district court erred when it increased his sentence under U.S.S.G. § 2L1.2(b)(1)(A)(vii)

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

because transporting undocumented aliens is not equivalent to alien smuggling for purposes of that guideline. Rodriguez correctly acknowledges that this issue is foreclosed by this court's decision in United States v. Solis-Camposano, 312 F.3d 164 (5th Cir. 2002), cert. denied, 123 S. Ct. 1311 (2003), which held that the term "smuggling" for purposes of § 2L1.2(b)(1)(A) includes "transporting" aliens within the United States.

Rodriguez also argues that the district court erred when it looked beyond the indictment charging him with transporting aliens and considered information in his presentence report to increase his sentence under § 2L1.2(b)(1)(A)(vii). This issue is likewise foreclosed. United States v. Sanchez-Garcia, 319 F.3d 677, 678 (5th Cir. 2003).

The judgment of the district court is AFFIRMED. Rodriguez's motion to supplement the record is DENIED.