

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

October 20, 2009

Charles R. Fulbruge III  
Clerk

\_\_\_\_\_  
No. 09-40550

Conference Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSUE ROGEL-TORRES,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:09-CR-20-1  
\_\_\_\_\_

Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Josue Rogel-Torres presents arguments that he concedes are foreclosed by *United States v. Ayala*, 542 F.3d 494, 495 (5th Cir. 2008), *cert. denied*, 129 S. Ct. 1388 (2009), which held that a violation of TEXAS PENAL CODE § 21.11(a) constitutes the offense of sexual abuse of a minor, justifying a U.S.S.G. § 2L1.2(b)(1)(A)(ii) offense level increase. The appellant's unopposed motion for summary disposition is GRANTED, and the judgment of the district court is AFFIRMED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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