

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

May 3, 2012

Lyle W. Cayce  
Clerk

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No. 11-40511  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

POMPILIO MENDEZ-DIAZ,

Defendant - Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:10-CR-1134-02

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Before SMITH, BARKSDALE, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Pompilio Mendez-Diaz appeals the sentence of 56-months' imprisonment imposed following his guilty-plea conviction for conspiracy to transport illegal aliens within the United States, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii), 1324(a)(1)(A)(v)(I), and 1324(a)(1)(B)(i). Mendez contends his guilty plea was not knowingly and voluntarily entered because he was not aware that his offense level for the advisory Sentencing Guidelines would be increased based on: 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 11-40511

creating a risk of serious injury (to border patrol agents who apprehended Mendez and his group of illegal aliens); and his causing a serious injury (for raping a member of the alien group). He also contends his sentence was unreasonable because of these upward adjustments. The Government counters that Mendez' appeal is barred because, in his plea agreement, he waived the right to appeal his sentence.

The plain language of Mendez' plea agreement confirms that he waived the right to pursue this appeal, and our review of the arraignment proceedings confirms that the waiver was knowing and voluntary. *See, e.g., United States v. Bond*, 414 F.3d 542, 544 (5th Cir. 2005) (two-step inquiry for waiver of appeal).

AFFIRMED.