

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

United States Court of Appeals
Fifth Circuit

FILED

July 8, 2013

Lyle W. Cayce
Clerk

No. 12-40970

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EUSEBIO URIAS-MARQUEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:12-CR-84-1

Before JOLLY, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:*

Eusebio Urias-Marquez appeals the 51-month sentence of imprisonment imposed following his guilty plea conviction of being illegally present in the United States after removal. He argues that the district court erred in imposing a 16-level enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(ii) based on his Arizona attempted smuggling conviction. We need not determine whether the district court so erred because the error in applying the enhancement, if any, was harmless.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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As the Government notes, in imposing the 51-month sentence of imprisonment, the district court indicated that it would impose the same sentence based on the factors of 18 U.S.C. § 3553(a) no matter the application of the enhancement. In view of the foregoing, the Government has met its burden to establish that any error in applying the § 2L1.2(b)(1)(A)(ii) enhancement was harmless. *See United States v. Richardson*, 676 F.3d 491, 511 (5th Cir. 2012); *United States v. Bonilla*, 524 F.3d 647, 656 (5th Cir. 2008). The judgment of the district court is affirmed.

AFFIRMED.