

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

United States Court of Appeals
Fifth Circuit

FILED

August 18, 2015

Lyle W. Cayce
Clerk

No. 14-40903
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MANUEL URESTI-GARZA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:13-CR-1497-1

Before KING, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Manuel Uresti-Garza appealed the 41-month sentence imposed following his guilty plea conviction for being found in the United States after previous deportation. For the first time on appeal, he contends that the district court plainly erred in imposing a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(i) based on his 2011 Nebraska conviction for distribution of a

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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controlled substance because the statute of conviction, Nebraska Revised Statute § 28-416(1)(a) (2010), does not require proof of commercial activity.

This argument is foreclosed by our recent holdings in *United States v. Martinez-Lugo*, 782 F.3d 198, 204-05 (5th Cir. 2015), *petition for cert. filed* (June 19, 2015) (No. 14-10355), and *United States v. Rodriguez-Bernal*, 783 F.3d 1002, 1003, 1008 (5th Cir. 2015). Accordingly, Uresti-Garza has shown no clear or obvious error with regard to his sentence. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

AFFIRMED.