

**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. 14-40930
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIO EDUARDO ACOSTA-JUAREZ, also known as Jose R. Chavez, also known as Mario Acosta,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:13-CR-1307-1

Before JOLLY, GRAVES, and COSTA, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Mario Eduardo Acosta-Juarez raises an argument that is foreclosed by *United States v. Teran-Salas*, 767 F.3d 453, 458-62 (5th Cir. 2014), *cert. denied*, 135 S. Ct. 1892 (2015). In *Teran-Salas*, we determined that the appellant was not entitled to relief based merely on the existence of a theoretical possibility that a defendant could be

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 14-40930

convicted under Texas Health & Safety Code § 481.112(a) for conduct that would not qualify as a federal drug trafficking offense. *See Teran-Salas*, 767 F.3d at 458. Acosta-Juarez has not demonstrated “a realistic probability that Texas would prosecute under an ‘administering’ theory in a way that does not also constitute either ‘dispensing’ or ‘distributing’ under the federal sentencing guidelines.” *Id.* at 461-62.

Acosta-Juarez also raises an argument that is foreclosed by *United States v. Martinez-Lugo*, 782 F.3d 198, 204-05 (5th Cir. 2015), *petition for cert. filed* (June 19, 2015) (No. 14-10355). In *Martinez-Lugo*, 782 F.3d at 204-05, we held that an enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(i) for a prior conviction of a drug trafficking offense is warranted regardless whether the conviction for the prior offense required proof of remuneration or commercial activity.

The motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.