

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

No. 14-40940
Conference Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 22, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MANUEL AGAPITO GARCIA-CONTRERAS,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:14-CR-290-1

Before HIGGINBOTHAM, DENNIS, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Manuel Agapito Garcia-Contreras 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 convicted under Texas Health & Safety Code § 481.112(a) for conduct that

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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would not qualify as a federal drug trafficking offense. *See Teran-Salas*, 767 F.3d at 458. Garcia-Contreras 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.

Garcia-Contreras also raises an argument that is foreclosed by our holding 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), 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.

Accordingly, the Government’s unopposed 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.