

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

No. 14-40969
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 15, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SERGIO RAMIREZ-GANDARILLA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:14-CR-214-1

Before KING, JOLLY, and HAYNES, Circuit Judges.

PER CURIAM:*

Sergio Ramirez-Gandarilla pleaded guilty to being an alien unlawfully found in the United States after deportation, having been previously convicted of a felony. Relevant to the appeal, the district court assessed a 12-level “drug trafficking offense” enhancement, pursuant to § 2L1.2(b)(1)(B), based on Ramirez-Gandarilla’s 1989 federal conviction for possession with intent to distribute marijuana.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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For the first time on appeal, Ramirez-Gandarilla argues that the district court plainly erred by applying the 12-level drug trafficking enhancement under § 2L1.2 because his 1989 federal conviction for possession with intent to distribute marijuana could have been committed without evidence of remuneration or commercial activity.

This court recently held that an enhancement under § 2L1.2(b)(1)(A)(i) for a prior drug trafficking offense, as that term is defined by the Sentencing Commission in § 2L1.2, comment. (n.1(B)(iv)), is warranted regardless of whether the conviction for the prior offense required proof of remuneration or commercial activity. *United States v. Martinez-Lugo*, 782 F.3d 198, 204-05 (5th Cir. 2015). Additionally, in *United States v. Rodriguez-Escareno*, 700 F.3d 751, 754 (5th Cir. 2012), this court specifically stated that “21 U.S.C. § 841(a)(1) is a federal drug trafficking offense as defined in Application Note 1” of § 2L1.2. Accordingly, the judgment of the district court is AFFIRMED.