

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

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No. 15-40842  
Conference Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 17, 2016

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE HUMBERTO AVALOS-GUTIERREZ, also known as Jose Garza-Ramirez,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:15-CR-169-1

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Before DAVIS, SMITH, and PRADO, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Jose Humberto Avalos-Gutierrez raises an argument that is foreclosed by *United States v. Martinez-Lugo*, 782 F.3d 198, 204-05 (5th Cir.), *cert. denied*, 136 S. Ct. 533 (2015). 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 felony conviction of a drug trafficking

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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offense is warranted regardless whether the conviction for the prior offense required proof of remuneration or commercial activity. Accordingly, 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.