

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

No. 14-40847
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 8, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CESAR CARDONA-LOPEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:14-CR-51

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Cesar Cardona-Lopez pleaded guilty to two counts of transportation of an undocumented alien. He was sentenced to concurrent terms of 21 months of imprisonment. He argues that the district court clearly erred in adjusting his sentence for transporting aliens in a way that created a substantial risk of death or serious bodily injury. Citing *United States v. Solis-Garcia*, 420 F.3d 511 (5th Cir. 2005), and *United States v. Zuniga-Amezquita*, 468 F.3d 886 (5th

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 14-40847

Cir. 2006), he argues that his passengers had access to oxygen, were protected from the weather, could communicate with the driver, and could exit the vehicle quickly. Because the danger posed if an accident occurred was no greater than a passenger not wearing a seatbelt, Cardona-Lopez asserts, the adjustment to his sentence was not warranted.

This court reviews the district court's application of the Sentencing Guidelines de novo and its findings of fact for clear error. *United States v. Cuyler*, 298 F.3d 387, 389 (5th Cir. 2002). It is undisputed that Cardona-Lopez was transporting 14 individuals in a vehicle rated to carry seven passengers and that nine of his passengers were unrestrained in the cargo area of the minivan. Unlike the defendant in *Solis-Garcia*, Cardona-Lopez was "carrying substantially more passengers than the rated capacity of a motor vehicle." See U.S.S.G. § 2L1.1(b)(6), comment. (n.5). Moreover, Cardona-Lopez does not dispute that he was speeding on a busy section of Highway 77 while transporting the unrestrained passengers. In light of these additional aggravating factors, the district court's application of the § 2L1.1(b)(6) adjustment was not erroneous.

AFFIRMED.