

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

No. 18-40392
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
December 12, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIO RAYMUNDO MIRANDA-ONTIVEROS ,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:16-CR-178-3

Before KING, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:*

A jury convicted Mario Raymundo Miranda-Ontiveros of conspiring to possess with the intent to distribute methamphetamine in violation of 21 U.S.C. § 846. The district court sentenced him to 360 months in prison. For the first time on appeal, he challenges the district court's application of the two-level importation enhancement under U.S.S.G. § 2D1.1(b)(5). We review for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Miranda-Ontiveros's argument that § 2D1.1(b)(5) has a mens rea requirement is foreclosed by *United States v. Serfass*, 684 F.3d 548, 552 (5th Cir. 2012), and *United States v. Foulks*, 747 F.3d 914, 915 (5th Cir. 2014). Because Miranda-Ontiveros's remaining arguments regarding the § 2D1.1(b)(5) enhancement raise factual issues which could have been resolved by the district court upon proper objection at sentencing, he cannot show plain error. *See Serfass*, 684 F.3d at 553-54; *United States v. Lopez*, 923 F.2d 47, 50 (5th Cir. 1991).

The judgment of the district court is AFFIRMED.