

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

United States Court of Appeals
Fifth Circuit

FILED

July 20, 2010

Lyle W. Cayce
Clerk

No. 09-40833

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIO MENDOZA MEDINA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:08-CR-1552-1

Before GARZA, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Mario Mendoza Medina was convicted by guilty plea for conspiracy to harbor aliens within the United States and was sentenced to 24 months of imprisonment and two years of supervised release. He appeals from that sentence and argues that the district court erred by applying U.S.S.G. § 2L1.1(b)(5)(B) for brandishing a dangerous weapon. He contends that there was no evidence that he personally brandished a weapon and that the adjustment cannot be applied through relevant conduct because the district

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

court failed to make a separate finding as to the scope of his agreement in the conspiracy.

By adopting the presentence report (“PSR”), the district court made implicit findings based on the PSR’s factual findings. *See United States v. Carreon*, 11 F.3d 1225, 1231 (5th Cir. 1994). Therefore, the district court did not err by applying § 2L1.1(b)(5)(B) to Medina’s sentence on the basis of relevant conduct. *See United States v. Williams*, 520 F.3d 414, 422 (5th Cir. 2008).

Accordingly, the judgment of the district court is AFFIRMED.