

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

United States Court of Appeals
Fifth Circuit

FILED

March 20, 2013

Lyle W. Cayce
Clerk

No. 11-41161
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE RUBEN ARGUETA-PADILLA, Also Known as Alejandro Argueta-Rivera,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Texas
No. 1:10-CR-1126-1

Before SMITH, PRADO, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Jose Argueta-Padilla appeals the sentence imposed following his guilty-plea conviction of being found unlawfully present in the United States after

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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deportation. He asserts that the district court plainly erred in applying a sixteen-level enhancement pursuant to U.S. Sentencing Guidelines § 2L1.2(b)-(1)(A)(i).

Because Argueta-Padilla did not object to the enhancement in the district court, review is limited to plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). To show plain error, Argueta-Padilla must show a forfeited error that is clear or obvious and that affects his substantial rights. *See id.* If he makes such a showing, this court has the discretion to correct the error, but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Henderson v. United States*, 133 S. Ct. 1121, 1123 (2013).

Argueta-Padilla concedes that his conviction of count one in Maryland Case No. 105209C for distribution of a controlled dangerous substance qualifies as a drug-trafficking offense. In view of that concession, he cannot show any error, much less plain error, in the application of the enhancement. Argueta-Padilla's motion to withdraw counsel and appoint new counsel is DENIED.

The judgment of sentence is AFFIRMED.