

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

United States Court of Appeals
Fifth Circuit

FILED

July 5, 2013

Lyle W. Cayce
Clerk

No. 12-40951

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARMANDO ORTEGA-GARCIA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:11-CR-1317-1

Before WIENER, ELROD, and GRAVES, Circuit Judges.

PER CURIAM:*

Armando Ortega-Garcia (Ortega) appeals the 37-month sentence imposed following his guilty plea conviction of being illegally present in the United States following deportation. He contends that the district court erred in enhancing his offense level pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(i). Specifically, Ortega argues that his drug conspiracy conviction under 21 U.S.C. § 846 does not fit within the generic, contemporary meaning of “conspiracy,” and thus does not warrant the

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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16-level enhancement under § 2L1.2(b)(1)(A)(i), because the conviction did not require proof of an overt act.

As Ortega concedes, the issue he raises is foreclosed by *United States v. Rodriguez-Escareno*, 700 F.3d 751, 754 (5th Cir. 2012), *cert. denied*, 2013 WL 1313840 (Apr. 29, 2013) (No. 12-9483). In *Rodriguez-Escareno*, we determined that the § 2L1.2(b)(1)(A)(i) enhancement applies to the federal crime of conspiring to commit a drug trafficking offense. *Id.*

Accordingly, the motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.