

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

United States Court of Appeals
Fifth Circuit

FILED

May 23, 2013

Lyle W. Cayce
Clerk

No. 12-41032

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ENRIQUE PERALES ORDUNA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:12-CR-324-1

Before STEWART, Chief Judge, and KING and CLEMENT, Circuit Judges.

PER CURIAM:*

Enrique Perales Orduna (Perales) appeals the 63-month sentence imposed following his conviction for illegal reentry following deportation in violation of 8 U.S.C. § 1326. Perales argues that the district court plainly erred by imposing a 16-level enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(ii) based on his prior conviction for indecency with a child under § 21.11(a)(2) of the Texas Penal Code.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Perales's argument is foreclosed by our decisions in *United States v. Rodriguez*, 711 F.3d 541, 562-63 (5th Cir. 2013) (en banc), and *United States v. Zavala-Sustaita*, 214 F.3d 601, 604-08 (5th Cir. 2000). To the extent that Perales argues that his prior conviction for indecency with a child does not constitute sexual abuse of a minor and thus is not an aggravated felony under 8 U.S.C. § 1101(a)(43)(A) for purposes of the enhanced penalty provision in § 1326(b)(2), that argument is also foreclosed. *See Zavala-Sustaita*, 214 F.3d at 607-08.

Accordingly, the judgment of the district court is AFFIRMED.