

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

No. 14-41113
Conference Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 18, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARCELINO MARTINEZ-RUBIO,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:14-CR-734-1

Before JOLLY, GRAVES, and COSTA, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Marcelino Martinez-Rubio raises an argument that is foreclosed by *United States v. Martinez-Lugo*, 782 F.3d 198, 204-05 (5th Cir. 2015), *petition for cert. filed* (June 19, 2015) (No. 14-10355). In *Martinez-Lugo*, we held that an enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(i) for a prior conviction of a drug trafficking offense is

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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warranted regardless whether the conviction for the prior offense required proof of remuneration or commercial activity.

Martinez-Rubio also raises an argument that is foreclosed by *United States v. Rodriguez-Escareno*, 700 F.3d 751, 753-54 (5th Cir. 2012), which held that the sentence enhancement provided for in § 2L1.2(b)(1)(A)(i) applies to a conviction for the federal crime of conspiracy to commit a federal drug trafficking offense.

The motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.