

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

No. 18-40107
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 31, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE JORGE ESPINOZA-MENDOZA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:17-CR-1281-1

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Jose Jorge Espinoza-Mendoza appeals the 71-month sentence he received following his guilty-plea conviction for conspiracy to harbor undocumented aliens in violation of 8 U.S.C. § 1324. Espinoza-Mendoza argues that the district court erred by enhancing his sentence pursuant to U.S.S.G. § 2L1.1(b)(6) based on a finding that his offense involved a substantial risk of bodily injury.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 18-40107

This court reviews a district court's interpretation and application of the Guidelines de novo and the district court's fact findings relative to the § 2L1.1(b)(6) enhancement for clear error. *United States v. Mateo Garza*, 541 F.3d 290, 293 (5th Cir. 2008). The transportation of aliens in the trunk of a vehicle is specifically listed in the comments to § 2L1.1(b)(6) as the type of conduct contemplated by the Sentencing Commission in drafting the guideline provision to be "reckless conduct." § 2L1.1, comment. (n.3); *see Mateo Garza*, 541 F.3d at 293-94 (observing that transporting persons in a trunk or engine compartment of a vehicle *per se* creates a substantial risk of serious bodily injury or death because those areas are not designed to hold human passengers). Accordingly, the district court did not err by enhancing Espinoza-Mendoza's sentence based on its finding that he was responsible for the transportation of aliens in the trunk of at least one vehicle.

Accordingly, the judgment of the district court is **AFFIRMED**.