

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-50249
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO REYES-ESPINOSA, also known as
Francisco Espinoza, also known as Reyes Espinoza,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-00-CR-467-ALL

October 29, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Francisco Reyes-Espinoza appeals his sentence from his guilty-plea conviction for being found illegally in the United States. See 8 U.S.C. § 1326(a), (b). He argues that the district court erred in applying a 16-level "aggravated felony" increase, pursuant to U.S.S.G. § 2L1.2(b)(1)(A), because the rule of lenity requires the court to interpret the term "drug trafficking crime" to exclude his state conviction for possession of less than one gram of cocaine. Reyes-Espinoza acknowledges

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that his argument is foreclosed by this court's decision in United States v. Hinojosa-Lopez, 130 F.3d 691, 693-94 (5th Cir. 1997). He seeks to preserve the issue for possible review by the Supreme Court.

The district court did not err in applying U.S.S.G. § 2L1.2(b)(1)(A). Hinojosa-Lopez, 130 F.3d at 693-94; see United States v. Hernandez-Avalos, 251 F.3d 505, 508-09 (5th Cir. 2001), cert. denied, (U.S. Oct. 1, 2001) (No. 01-5773).

AFFIRMED.