

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

United States Court of Appeals  
Fifth Circuit

**FILED**

August 13, 2015

Lyle W. Cayce  
Clerk

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No. 14-40441  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CRISTOBAL SARCENO-SARCENO,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:13-CR-1892-1

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Before JONES, BENAVIDES, and GRAVES, Circuit Judges.

PER CURIAM:\*

Cristobal Sarceno-Sarceno (Sarceno) pleaded guilty to illegal reentry following deportation, in violation of 8 U.S.C. § 1326. Relevant to this appeal, the district court assessed a 12-level “drug trafficking offense” enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(B) based on Sarceno’s 2008 New York conviction for criminal sale of a controlled substance in the third degree.

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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For the first time on appeal, Sarceno contends that the district court plainly erred in imposing the 12-level enhancement because the New York offense of conviction may be violated by the giving away or sharing of drugs with no remuneration. He argues that the term “drug trafficking offense” in § 2L1.2 requires remuneration.

While the instant appeal was pending, this court rejected the argument that an offense must require remuneration to qualify as a drug trafficking offense under § 2L1.2. *United States v. Martinez-Lugo*, 782 F.3d 198, 201-05 (5th Cir. 2015). Accordingly, the judgment of the district court is AFFIRMED.