

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-40414  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS GUSTAVO RIOS-GARZA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-97-CR-498-1  
- - - - -

April 15, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Luis Gustavo Rios-Garza appeals the sentence he received following his guilty-plea conviction for being present in the United States without permission following deportation, in violation of 8 U.S.C. § 1326(a). Rios-Garza argues that the district court erred and acted in violation of his right to due process by imposing a sixteen-point enhancement, pursuant to U.S.S.G. § 2L1.2(b)(1)(A), for his prior Texas felony conviction for possession of cocaine. Rios-Garza's contention that the district court erred in applying the guideline is foreclosed by

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

our opinion in United States v. Hinojosa-Lopez, 130 F.3d 691, 694 (5th Cir. 1997). Rios-Garza's constitutional argument is unfounded because his challenge is to a sentencing guideline, not to a criminal statute. "Due process does not mandate . . . notice, advice, or a probable prediction of where, within the statutory range, the guideline sentence will fall." United States v. Pearson, 910 F.2d 221, 223 (5th Cir. 1990).

AFFIRMED.