

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 10-13733
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT APRIL 29, 2011 JOHN LEY CLERK

D.C. Docket No. 6:10-cr-00033-ACC-GJK-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

IGNACIO GUTTIEREZ-VERGARA,
a.k.a. Ignacio Gutierrez,
a.k.a. Tomas Aguirre,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(April 29, 2011)

Before PRYOR, MARTIN and FAY, Circuit Judges.

PER CURIAM:

Ignacio Gutierrez-Vergara appeals his sentence of 24 months of imprisonment for reentering the United States illegally. 8 U.S.C. § 1326(a), (b)(1). Gutierrez-Vergara argues that the district court erred by enhancing his sentence for having committed an “alien smuggling offense” because he transported an alien within, instead of into, the United States. We affirm.

The district court did not err by enhancing Gutierrez-Vergara’s sentence. A defendant is subject to a 16-level enhancement of his sentence if he has been deported from the United States previously after committing an “alien smuggling offense.” United States Sentencing Guidelines Manual § 2L1.2(b)(1)(A)(vii) (2008). The commentary to section 2L1.2 defines the term “alien smuggling offense” as having “the meaning given that term in section 101(a)(43)(N) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)(N)),” *id.* cmt. n.1(B)(i), and the Act defines an “alien smuggling offense” as “an offense described in paragraph (1)(A) . . . of section [1324(a)] (relating to alien smuggling),” 8 U.S.C. § 1101(a)(43)(N). Section 1324 prohibits a person from “transport[ing], or mov[ing] or attempt[ing] to transport or move [an] alien within the United States by means of transportation or otherwise.” *Id.* § 1324(a)(1)(A). Gutierrez-

Vergara's conviction in 1995 for transporting an illegal alien "within the United States" constituted an "alien smuggling offense."

We **AFFIRM** Gutierrez-Vergara's sentence.