

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

United States Court of Appeals
Fifth Circuit

FILED

October 1, 2012

Lyle W. Cayce
Clerk

No. 11-40129

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JOSE LARA,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:10-CR-698-1

Before BARKSDALE, CLEMENT, and GRAVES, Circuit Judges.

PER CURIAM:*

Jose Lara appeals from his guilty-plea conviction of attempting to export more than 500 rounds of ammunition from the United States to Mexico. Lara contends the district court erred in determining his offense subjected him to a higher base-offense level of 26 under Guideline § 2M5.2(a)(1). He asserts the district court read Guideline § 2M5.2(a)(2) too narrowly, and the lower base-offense level of 14 is warranted because: (1) his offense involved only ammunition and *not* firearms; and (2) the ammunition at issue was designed

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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only for .357 and .38 caliber, non-fully-automatic small arms. He contends his position is supported by the 2011 amended version of Guideline § 2M5.2.

Our court recently rejected materially indistinguishable arguments in *United States v. Diaz-Gomez*, 680 F.3d 477, 479-82 (5th Cir. 2012).

AFFIRMED.