

APR 07 2008

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANGEL FIGUEROA-COMACATECO,

Defendant - Appellant.

No. 07-10029

D.C. No. CR-06-01074-FRZ

District of Arizona,

Tucson

ORDER

Before: SILVERMAN, McKEOWN, and TALLMAN, Circuit Judges.

The Memorandum filed on February 14, 2008 is amended as follows:

The fifth full paragraph is hereby deleted and the following is substituted in its place:

First, he argues that the district court erred in enhancing his sentence by sixteen levels pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(vii) because, he says, the government did not prove that his prior alien smuggling offense was not committed to assist, abet, or aid his spouse, child, or parent. The burden of proving this exception falls explicitly on Figueroa-Comacateco. *See* U.S.S.G. § 2L1.2 cmt. (1.B(i)); 8 U.S.C. § 1101(a)(43)(N). Figueroa-Comacateco has not met this burden.

With the above amendment, the panel has voted unanimously to deny the Petition for Panel Rehearing.

The Petition for Panel Rehearing is DENIED.

No subsequent Petition for Panel Rehearing may be filed.