

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40250
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHAWN LAWRENCE TALLMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-01-CR-625-1

November 8, 2002

Before DAVIS, WIENER and EMILIO GARZA, Circuit Judges.

PER CURIAM:*

Shawn Lawrence Tallman ("Tallman") appeals his guilty plea conviction for transporting undocumented aliens within the United States for financial gain in violation of 8 U.S.C. § 1324 & 18 U.S.C. § 2. Tallman contends that the factual basis was insufficient to support his guilty plea because the indictment alleged only that the aliens "entered" the United States and that he furthered such violation. Tallman argues that the factual

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

basis did not support that he assisted the illegal aliens' entry into the United States because their entry had already been completed at the time that he transported them.

Federal Rule of Criminal Procedure 11(f) requires the district court to ensure that there is a factual basis for the plea by comparing "(1) the conduct to which the defendant admits with (2) the elements of the offense charged in the indictment or information" to ensure that the defendant understands not only the nature of the charge but also that his conduct falls within the charge. United States v. Marek, 238 F.3d 310, 315 (5th Cir.) (en banc) (citation omitted), cert. denied, 122 S. Ct. 37 (2001). We review Tallman's challenge for plain error only. See United States v. Vonn, 122 S. Ct. 1043, 1046 (2002).

Because current law does not support Tallman's reading of the meaning of the term entry and/or entered as it is used in § 1324(a)(1)(A)(ii), the district court did not commit plain error. See United States v. Calverley, 37 F.3d 160, 162(5th Cir. 1994) (en banc); United States v. Hull, 160 F.3d 265, 272 (5th Cir. 1998). Accordingly, Tallman's conviction is AFFIRMED.