

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

United States Court of Appeals  
Fifth Circuit

**FILED**

September 2, 2011

Lyle W. Cayce  
Clerk

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No. 10-40619  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

OSCAR RENE GUEVARA-VENTURA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:10-CR-290-1

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Before KING, JOLLY, and GRAVES, Circuit Judges.

PER CURIAM:\*

Oscar Rene Guevara-Ventura (Guevara) appeals the sentence imposed for his illegal reentry conviction in violation of 8 U.S.C. § 1326(a). He argues that the district court committed reversible plain error by convicting, sentencing, and entering judgment against him under § 1326(b)(2) on the basis that he was previously convicted of an aggravated felony.

Although we have not yet decided whether robbery or aggravated robbery in Texas Penal Code §§ 29.02 and 29.03 are aggravated felonies, we are not

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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persuaded that Guevara has carried his burden of demonstrating error, plain or otherwise, in the district court's application of the § 1326(b)(2) enhancement on the basis that his convictions were crimes of violence under 8 U.S.C. § 1101(a)(43)(F) and 18 U.S.C. § 16(b). *See United States v. Gore*, 636 F.3d 728, 736-37 (5th Cir. 2011) (concluding that Texas aggravated robbery is a violent felony under the Armed Career Criminal Act because it involves a serious potential risk of physical injury to another); *United States v. Sandlin*, 589 F.3d 749, 757 (5th Cir. 2009) (stating that the defendant bears the burden of persuasion on plain error review), *cert. denied*, 130 S. Ct. 2078 (2010).

The judgment of the district court is AFFIRMED.