

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

United States Court of Appeals
Fifth Circuit

FILED

April 16, 2012

Lyle W. Cayce
Clerk

No. 11-40744
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MOISES GUTIERREZ-CASTRO,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:10-CR-2499-1

Before REAVLEY, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

Moises Gutierrez-Castro appeals his conviction for transporting and bringing illegal aliens into the United States for the purpose of private financial gain in violation of 8 U.S.C. § 1324(a) and 18 U.S.C. § 2. Gutierrez-Castro avers that the evidence was insufficient to show that he knowingly or recklessly disregarded the fact that the aliens with whose transportation he was charged were illegally present in the United States or that he transported them with the intent to further their illegal presence in the United States. He also contends

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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that there is insufficient evidence that he intended to commit a criminal act by bringing them into the United States or that he committed the offenses for commercial advantage or private financial gain.

We conclude that the evidence was sufficient to support Gutierrez-Castro's conviction. *See United States v. Moser*, 123 F.3d 813, 819 (5th Cir. 1997). The evidence showed that the Government's material witnesses, Maria Dolores Erazo-Munoz and Otto Rene Castro-Vasquez, admitted that they entered the United States illegally and identified Gutierrez-Castro as the guide who helped them in their effort to enter the United States. The evidence demonstrated that Gutierrez-Castro directed the movement and actions of these witnesses and facilitated their entry into and presence in the United States. *See United States v. Villanueva*, 408 F.3d 193, 201 n.8 (5th Cir. 2005); *United States v. Nolasco-Rosas*, 286 F.3d 762, 765 (5th Cir. 2002). We also conclude that the evidence was sufficient to establish that Gutierrez-Castro participated in an illegal alien smuggling operation and that members of the operation received sums of money to help the illegal aliens enter the United States. *See United States v. Allende-Garcia*, 407 F. App'x 829, 835 (5th Cir. 2011); *United States v. Smarr*, 207 F. App'x 499, 500 (5th Cir. 2006). The judgment of the district court is AFFIRMED.