

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

No. 14-50126
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 1, 2015

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JAVIER GALINDO-CABALLERO,

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:13-CR-429

Before SMITH, BARKSDALE, and PRADO, Circuit Judges.

PER CURIAM:*

Javier Galindo-Caballero was charged with two counts of aiding and abetting and transporting illegal aliens within the United States, for the purpose of financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), (v)(II) and 18 U.S.C. § 2. Galindo admitted to having transported illegal aliens within the United States, but no facts in the record established he had done so for financial gain. The magistrate judge made this finding at arraignment, and

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

No. 14-50126

Galindo pleaded guilty to only one count of having transported illegal aliens within the United States. At sentencing, the district court also noted no facts established Galindo had committed the offense for financial gain, and stated it would accept a plea only as to transporting illegal aliens within the United States. The district court sentenced Galindo to, *inter alia*, 27 months' imprisonment. Galindo challenges the sentence.

For the first time on appeal, Galindo asserts the written judgment of conviction states he pleaded guilty to transporting illegal aliens within the United States for financial gain, and he contends that, because there was no factual basis to support a guilty plea for that offense, the district court erred in accepting his guilty plea and entering a judgment of conviction. It is clear from the sentencing transcript, however, that the district court rejected Galindo's plea to the extent that it included the financial-gain element and accepted the plea only insofar as Galindo admitted to having transported illegal aliens within the United States, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). Galindo does not dispute there was an adequate factual basis to support his plea of guilty to that offense.

The record, however, reflects a clerical error in the written judgment. The judgment correctly states that Galindo was convicted under 8 U.S.C. § 1324(a)(1)(A)(ii), but, as the Government notes, the judgment incorrectly describes the offense of conviction as having been committed for financial gain.

Accordingly, Galindo's conviction and sentence are **AFFIRMED**, but this matter is **REMANDED** to district court with instructions to correct the judgment to reflect that Galindo pleaded guilty to, and was convicted of, a violation of 8 U.S.C. § 1324(a)(1)(A)(ii), with a sentence imposed under that statute, and to delete the reference to "for financial gain" from the judgment.