

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

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No. 18-40686  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 9, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JORGE MIGUEL CHOY-SOTO,

Defendant - Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:18-CR-43-1

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Before REAVLEY, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

Jorge Miguel Choy-Soto pleaded guilty to a single count of possession with intent to distribute more than 100 kilograms of marijuana. On appeal, he contends that his conviction was not supported by an adequate factual basis because the Government did not meet its obligation to prove that he had knowledge of the type and quantity of the controlled substance involved in his offense.

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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As Choy-Soto concedes, his sole appellate argument is foreclosed by *United States v. Betancourt*, 586 F.3d 303, 308-09 (5th Cir. 2009), which determined that *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), did not overturn *United States v. Gamez-Gonzalez*, 319 F.3d 695 (5th Cir. 2003), and that the Government is not required to prove knowledge of the drug type and quantity as an element of a 21 U.S.C. § 841 drug trafficking offense. The Government thus did not have to prove that Choy-Soto knew the type and quantity of the controlled substance involved in his offense.

Accordingly, Choy-Soto's motion for summary disposition is **GRANTED**, and the district court's judgment is **AFFIRMED**.