

# United States Court of Appeals for the Fifth Circuit

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No. 23-11060  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

November 7, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

ELVIN OMAR VASQUEZ,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:23-CR-32-1

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Before JOLLY, JONES, and WILLETT, *Circuit Judges*.

PER CURIAM:\*

Elvin Omar Vasquez appeals the sentence imposed following his guilty plea conviction for illegal reentry after removal. He contends that the district court erred by sentencing him pursuant to 8 U.S.C. § 1326(b)(2) because he did not have a prior conviction for an aggravated felony. We

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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review for plain error only. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

Contrary to Vasquez's assertion, his Texas conviction for possession with intent to deliver a controlled substance constitutes an aggravated felony for purposes of § 1326(b)(2). *See* TEX. HEALTH & SAFETY CODE § 481.112(a); *Ochoa-Salgado v. Garland*, 5 F.4th 615, 616-22 (5th Cir. 2021); *see also* 8 U.S.C. § 1101(a)(43)(B); 18 U.S.C. § 924(c)(2). Accordingly, he has not demonstrated that the district court erred, plainly or otherwise, by sentencing him pursuant to § 1326(b)(2). *See Puckett*, 556 U.S. at 135.

AFFIRMED.