

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

United States Court of Appeals
Fifth Circuit

FILED

May 24, 2010

Lyle W. Cayce
Clerk

No. 09-10954

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

VICTORINO MALDONADO-SORIA, also known as Victor Maldonado,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:09-CR-44-1

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Victorino Maldonado-Soria (Maldonado) appeals his guilty plea conviction and sentence for illegally reentering the United States following deportation in violation of 8 U.S.C. § 1326. Maldonado contends that the district court erred by imposing a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii) because his prior Texas conviction for aggravated assault is not a crime of violence under the Sentencing Guidelines. He argues, inter alia, that the Texas crime of aggravated assault is more broadly defined than most other definitions of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

aggravated assault because it may be committed by threatening behavior. The Government has moved for summary affirmance and provides a detailed argument regarding governing precedent, which the Government asserts forecloses Maldonado's argument. The Government alternatively moves for an extension of time to file a brief.

The Texas statute under which Maldonado was convicted, Texas Penal Code § 22.02 (Vernon 2006), is substantially similar to the generic, common sense definition of "aggravated assault" and thus qualifies as the enumerated offense of "aggravated assault" under the Guidelines. *See United States v. Guillen-Alvarez*, 489 F.3d 197, 199-201 (5th Cir. 2007). Accordingly, the Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.