

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

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2010

No. 10-40243
Conference Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE SANTOS ISIDRO-ACOSTA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:09-CR-1513-1

Before SMITH, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jose Santos Isidro-Acosta appeals his 41-month sentence following his conviction of unlawful reentry pursuant to 8 U.S.C. § 1326. Isidro-Acosta contends that the district court erred by imposing a 16-level crime of violence enhancement based on his prior Texas conviction of indecency by contact with a child under 17 years of age, a violation of Texas Penal Code § 21.11(a)(2). He argues that the Texas conviction is not within the enumerated offense of sexual abuse of a minor because an offense under § 21.11(a) can be committed against

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 10-40243

a victim who is 16 years of age. The Government moves for summary affirmance in lieu of filing a brief.

As Isidro-Acosta concedes, his argument is foreclosed by circuit precedent. *See United States v. Ayala*, 542 F.3d 494, 495 (5th Cir. 2008); *United States v. Zavala-Sustaita*, 214 F.3d 601, 604 (5th Cir. 2000). Accordingly, the judgment of the district court is AFFIRMED. The Government's motion for summary affirmance is GRANTED, and its alternative motion for an extension of time is DENIED.