

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

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2010

No. 10-50016
Conference Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARMANDO SIMENTAL-CARRILLO, also known as Manuel Garcia, also known
as Manuel Avilez, also known as Armando Braulio Simental,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:09-CR-386-1

Before SMITH, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Armando Simental-Carrillo (Simental) appeals the sentence imposed following his conviction of unlawful reentry pursuant to 8 U.S.C. § 1326. Simental contends that the district court erred by imposing a 16-level crime of violence enhancement based on his prior Texas conviction of indecency by exposure 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

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 10-50016

offense of sexual abuse of a minor because an offense under § 21.11(a) can be committed against a victim who is 16 years of age. The Government moves for summary affirmance or, in the alternative, for an extension of time to file a brief.

As Simental 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 and the Government's motion for summary affirmance is GRANTED. The alternative request for an extension of time to file a brief is DENIED.