

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

United States Court of Appeals
Fifth Circuit

FILED

April 3, 2013

Lyle W. Cayce
Clerk

No. 12-40712

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CEASAR GONZALES, also known as Rene Castro, also known as Ceasar Elliot
Gonzales,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:12-CR-120-1

Before KING, CLEMENT, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Cesar Gonzales appeals his 44-month sentence for unlawful presence in the United States under 8 U.S.C. § 1326(b). He contends that the district court plainly erred by imposing the 16-level crime of violence enhancement in U.S.S.G. § 2L1.2 based upon his prior conviction for burglary of a habitation under Texas Penal Code § 30.02(a)(1). According to Gonzales, the Texas offense does not qualify as the enumerated offense of burglary of a dwelling in the commentary

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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to § 2L1.2 because Texas defines “owner” to include “a person who[] has . . . a greater right to possession of the property than the actor.”

Because Gonzales did not object to the enhancement in the district court, we review for plain error. *See United States v. Morales-Mota*, 704 F.3d 410, 411 (5th Cir. 2013). We rejected a materially indistinguishable argument in *Morales-Mota*, 704 F.3d at 412-13. In light of *Morales-Mota*, we find no error here, plain or otherwise. *See id.*

AFFIRMED.