

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

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No. 17-11004  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 15, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GERSON GONZALEZ TOVAR,

Defendant-Appellant

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Appeals from the United States District Court  
for the Northern District of Texas  
USDC No. 3:16-CR-103-1

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Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:\*

Gerson Gonzalez Tovar appeals his conviction for production of child pornography in violation of 18 U.S.C. § 2251(a). In the factual basis for his guilty plea, Tovar admitted that he produced a visual depiction and that it “was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce.”

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 17-11004

Tovar asserts that the factual basis for his guilty plea is insufficient under Federal Rule of Criminal Procedure 11 because he did not admit that the offense caused the materials to move interstate in the recent past. Relying on the Supreme Court's decision in *Bond v. United States*, 134 S. Ct. 2077 (2014), Tovar contends that a conviction in the absence of such proof impermissibly intrudes upon the police power of the States.

We review Tovar's forfeited objection to the factual basis for plain error. *See United States v. Trejo*, 610 F.3d 308, 313 (5th Cir. 2010) (footnote omitted). To establish plain error, Tovar must show a forfeited error that is clear or obvious and that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing, this court has the discretion to correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See id.*

We have rejected similar challenges. *See, e.g., United States v. Looney*, 606 F. App'x 744, 746-47 (5th Cir. 2015). Given the current state of the law, as Tovar concedes, the district court's finding that there was a sufficient factual basis for his guilty plea was not a clear or obvious error. *See Puckett*, 556 U.S. at 135. He raises the issue to preserve it for further review.

The judgment of the district court is AFFIRMED. The Government's motions for summary affirmance and, alternatively, for an extension of time to file an appellate brief, are DENIED.