

No. _____

In the
Supreme Court of the United States

JOSE LUIS RAMIREZ GALVAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

APPENDIX

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APPENDIX A

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

No. 16-11653
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 17, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS RAMIREZ GALVAN, also known as Jose Ramirezgalvan, also known as Jose Ramirez, also known as Vicente Ortega-Ramirez,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:16-CR-47-1

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Jose Louis Ramirez Galvan pleaded guilty to illegally reentering the United States after he had been removed, and he received a 24-month term of imprisonment, which was within the advisory guidelines range. He argues on appeal that the district court erred in classifying his prior Texas sexual assault of a child offense as an aggravated felony and thus urges this court to remand

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

for resentencing and for reformation of the judgment to delete the reference to 8 U.S.C. § 1326(b)(2), the statutory subsection that applies to those convicted of illegal reentry after having been removed following an aggravated felony conviction. Because Ramirez Galvan did not raise this issue in the district court, our review is for plain error. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 368 (5th Cir. 2009).

We have held that a similar Texas offense, indecency with a child, which punishes a person who “engages in sexual contact with a child” younger than 17 years old, Texas Penal Code § 21.11(a)(1), is an aggravated felony under 8 U.S.C. § 1101(a)(43)(F) because it “by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” 18 U.S.C. § 16(b); *United States v. Velazquez-Overa*, 100 F.3d 418, 421-22 (5th Cir. 1996). We explained that it was “obvious” that crimes in which children are sexually molested “typically occur in close quarters, and are generally perpetrated by an adult upon a victim who is not only smaller, weaker, and less experienced, but is also generally susceptible to acceding to the coercive power of adult authority figures.” *Velazquez-Overa*, 100 F.3d at 422. We went on to explain that “[a] child has very few, if any, resources to deter the use of physical force by an adult intent on touching the child,” concluding that “[i]n such circumstances, there is a significant likelihood that physical force may be used to perpetrate the crime.” *Id.*

That rationale extends to Ramirez Galvan’s offense, sexual assault of a child younger than 17 years old under Texas Penal Code § 22.011(a)(2), (c)(1), which punishes conduct that goes beyond mere sexual contact and specifically

covers explicit sexual acts involving a child.¹ Accordingly, the district court did not commit a clear or obvious error in finding that Ramirez Galvan’s sexual assault of a child conviction was an aggravated felony. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). The judgment is AFFIRMED.

¹ This court previously concluded that Texas Penal Code § 22.011(a)(2) was an aggravated felony because it “comport[ed] with the generic meaning of ‘sexual abuse of a minor’ and ‘statutory rape.’” *United States v. Rodriguez*, 711 F.3d 541, 562 (5th Cir. 2013) (en banc). In reaching that conclusion, we determined that the generic definitions of those offenses required that the victim be younger than 18. *See id.* at 560–61. The Supreme Court has since held that “the generic federal definition of sexual abuse of a minor requires that the victim be younger than 16.” *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1568 (2017). Although *Esquivel-Quintana* abrogates *Rodriguez*’s age-specific holding, that case’s remaining holdings are still good law. *See, e.g., Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 489 (5th Cir. 2008) (citing *Cent. Pines Land Co. v. United States*, 274 F.3d 881, 894 (5th Cir. 2001)).

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11653

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JOSE LUIS RAMIREZ GALVAN, also known as Jose Ramirezgalvan, also
known as Jose Ramirez, also known as Vicente Ortega-Ramirez,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is *denied*.

ENTERED FOR THE COURT:

Carolyn Denise King
UNITED STATES CIRCUIT JUDGE

APPENDIX C

REVISED November 16, 2017

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

No. 16-11653
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 17, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS RAMIREZ GALVAN, also known as Jose Ramirezgalvan, also known as Jose Ramirez, also known as Vicente Ortega-Ramirez,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:16-CR-47-1

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Jose Louis Ramirez Galvan pleaded guilty to illegally reentering the United States after he had been removed, and he received a 24-month term of imprisonment, which was within the advisory guidelines range. He argues on appeal that the district court erred in classifying his prior Texas sexual assault

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of a child offense as an aggravated felony and thus urges this court to remand for resentencing and for reformation of the judgment to delete the reference to 8 U.S.C. § 1326(b)(2), the statutory subsection that applies to those convicted of illegal reentry after having been removed following an aggravated felony conviction. Because Ramirez Galvan did not raise this issue in the district court, our review is for plain error. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 368 (5th Cir. 2009).

We have held that a similar Texas offense, indecency with a child, which punishes a person who “engages in sexual contact with a child” younger than 17 years old, Texas Penal Code § 21.11(a)(1), is an aggravated felony under 8 U.S.C. § 1101(a)(43)(F) because it “by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” 18 U.S.C. § 16(b); *United States v. Velazquez-Overa*, 100 F.3d 418, 421-22 (5th Cir. 1996). We explained that it was “obvious” that crimes in which children are sexually molested “typically occur in close quarters, and are generally perpetrated by an adult upon a victim who is not only smaller, weaker, and less experienced, but is also generally susceptible to acceding to the coercive power of adult authority figures.” *Velazquez-Overa*, 100 F.3d at 422. We went on to explain that “[a] child has very few, if any, resources to deter the use of physical force by an adult intent on touching the child,” concluding that “[i]n such circumstances, there is a significant likelihood that physical force may be used to perpetrate the crime.” *Id.*

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This court’s recent decision in *United States v. Ovalle-Garcia*, 868 F.3d 313, 314 (5th Cir. 2017), holding that Tennessee statutory rape is not an aggravated felony, does not control the outcome here because the court in that case did not address whether a sexual offense against a minor can qualify as an aggravated felony under 8 U.S.C. § 1101(a)(43)(F) and 18 U.S.C. § 16(b).

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JOSE LUIS RAMIREZ GALVANCase Number: **3:16-CR-00047-B(1)**USM Number: **53857-177****Lauren Anita Woods**

Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Count 1 of the Indictment filed February 10, 2016
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☐	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense**Offense Ended****Count**

8 U.S.C. § 1326(a) & (b)(2) - Illegal Reentry After Removal From The United States

12/21/2015

1

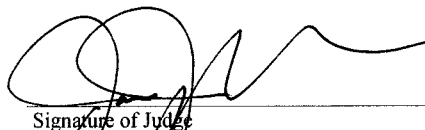
The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 17, 2016

Date of Imposition of Judgment



Signature of Judge

JANE J. BOYLE, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

November 17, 2016

Date

DEFENDANT: JOSE LUIS RAMIREZ GALVAN
CASE NUMBER: 3:16-CR-00047-B(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

TWENTY-FOUR (24) MONTHS. No term of supervised release imposed.

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be allowed to serve his sentence at FCI Seagoville, Seagoville, Texas, if eligible.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSE LUIS RAMIREZ GALVAN
CASE NUMBER: 3:16-CR-00047-B(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assesment*	Fine	Restitution
TOTALS	\$100.00		\$0.00	\$0.00

- ☐ The determination of restitution is deferred until after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.
- If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement \$

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the

☐ fine

☐ restitution

☐ the interest requirement for the

☐ fine

☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSE LUIS RAMIREZ GALVAN
CASE NUMBER: 3:16-CR-00047-B(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.