

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

November 24, 2008

Charles R. Fulbruge III  
Clerk

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No. 08-60017  
Summary Calendar

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AMADOR TORRES AVILA, also known as Amador Avila Torres

Petitioner

v.

MICHAEL B MUKASEY, U S ATTORNEY GENERAL

Respondent

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Petition for Review of an Order of the  
Board of Immigration Appeals  
BIA No. A37 721 097

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Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:\*

Amador Torres Avila petitions this court for review of an order of the Board of Immigration Appeals (BIA). The BIA dismissed his appeal of the Immigration Judge's decision, which found that Avila's prior Texas offense of deadly conduct was a crime of violence and an aggravated felony, thus rendering him removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii). In his petition, Avila argues that deadly conduct under TEX. PENAL CODE § 22.05 is not a crime of violence.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

This court lacks jurisdiction to consider petitions for review filed by aliens who are ordered removed based on the commission of an aggravated felony. See U.S.C. § 1252(a)(2)(C). Nevertheless, we retain jurisdiction to review the issue whether Avila's prior offense constitutes an aggravated felony for immigration purposes. See *Andrade v. Gonzales*, 459 F.3d 538, 542, 544 (5th Cir. 2006), cert. denied, 127 S. Ct. 973 (2007).

Avila has not shown that the BIA erred in its classification of his prior offense as a crime of violence and thus an aggravated felony. See *United States v. Hernandez-Rodriguez*, 467 F.3d 492, 495 (5th Cir. 2006); 18 U.S.C. § 16(a); 8 U.S.C. § 1101(a)(43)(F). Consequently, we lack jurisdiction to review his order of removal. See 8 U.S.C. § 1252(a)(2)(C).

Avila's petition for review is DISMISSED.