

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

No. 16-10587
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 9, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS DIAZ CARDOZO,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CR-340-1

Before WIENER, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Jesus Diaz Cardozo appeals the 27-month sentence imposed in connection with his conviction for illegal reentry following deportation. He argues that the district court plainly erred in applying the eight-level enhancement under former U.S.S.G. § 2L1.2(b)(1)(C) (2015). He contends that his prior conviction under Texas Penal Code (TPC) § 46.04 does not qualify as an aggravated felony because the Texas definitions of felony and firearm are

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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broader than the definitions of those terms in 18 U.S.C. § 922(g)(1). He concedes that this court rejected these arguments in the recent decision of *United States v. Castillo-Rivera*, 853 F.3d 218, 226 (5th Cir. 2017) (en banc), *petition for cert. filed* (June 28, 2017) (No. 17-5054), and he raises the issue merely to preserve it for further review. The Government has filed an unopposed motion for summary affirmance.

Summary affirmance is proper where, among other instances, “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The summary procedure is generally reserved for cases in which the parties concede that the issues are foreclosed by circuit precedent. *See United States v. Lopez*, 461 F. App’x 372, 374 n.6 (5th Cir. 2012).

The motion for summary affirmance is GRANTED, and the district court’s judgment is AFFIRMED. The Government’s alternative motion for an extension of time to file a brief is DENIED.