

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

No. 16-40529
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 29, 2018

Lyle W. Cayce
Clerk

UNITES STATES OF AMERICA,

Plaintiff - Appellee

v.

JUAN MANUEL RAMIREZ-VILLALZANA,

Defendant – Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:15-CR-847-1

ON PETITION FOR REHEARING EN BANC

Before KING, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:*

Treating this petition for rehearing en banc as a petition for panel rehearing, it is GRANTED. The prior opinion, *United States v. Ramirez-Villalzana*, 689 F. App'x 352 (2017), is withdrawn, and the following opinion is substituted.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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In a panel decision filed May 18, 2017, we affirmed application of a sentencing enhancement that treated Texas burglary of a habitation as a “crime of violence.” That decision relied on *United States v. Uribe*, 838 F.3d 667 (5th Cir. 2016), which held that the Texas burglary statute is divisible and thus subject to the modified categorical approach. Ramirez-Villalzana filed a timely motion for rehearing en banc asking the court to overrule *Uribe*’s divisibility analysis. The petition noted that an earlier petition raising the same issue was then pending in *United States v. Herrold*, No. 14-11317. The en banc court granted rehearing in *Herrold*, so we held this petition pending the outcome of the en banc proceeding. *Herrold* overruled *Uribe* and held that the burglary statute is not divisible. 883 F.3d 517 (5th Cir. 2018) (en banc). That means Ramirez-Villalzana’s burglary of a habitation should not have resulted in application of the 16-point crime of violence enhancement. The sentence is VACATED and this case REMANDED for resentencing.