

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

No. 16-40698
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
June 8, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAVIER GARZA-FLORES,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 6:14-CR-39-1

Before JONES, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:*

Javier Garza-Flores appeals the sentence imposed following his guilty plea conviction for illegal reentry after deportation. He contends that the district court erred in increasing his offense level pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(ii) based on his prior Texas conviction for burglary of a habitation under Texas Penal Code § 30.02. Garza-Flores argues, under *Mathis v. United States*, 136 S. Ct. 2243 (2016), that the Texas burglary statute

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 16-40698

is not divisible and that not every violation of § 30.02(a) qualifies as a crime of violence under § 2L1.2(b)(1)(A)(ii).

The Government has filed an opposed motion for summary affirmance asserting that Garza-Flores's arguments are foreclosed by our recent decision in *United States v. Uribe*, 838 F.3d 667 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 1359 (2017). In the alternative, the Government requests an extension of time in which to file a brief on the merits.

The Government is correct that *Uribe* forecloses Garza-Flores's *Mathis* argument. *See Uribe*, 838 F.3d at 669-71. Accordingly, the Government's motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.