

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

No. 16-41243
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 21, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

IGNACIO RODRIGUEZ-CEPEDA,

Defendant–Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:16-CR-17-1

Before JOLLY, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:*

Ignacio Rodriguez-Cepeda appeals his sentence for illegal reentry after

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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deportation. He contends that the district court erred in increasing his offense level under U.S.S.G. § 2L1.2(b)(1)(A)(ii) based on his Texas convictions of burglary of a habitation under Texas Penal Code § 30.02. Rodriguez-Cepeda urges, under *Mathis v. United States*, 136 S. Ct. 2243 (2016), that the burglary statute is not divisible and that not every violation of § 30.02(a) qualifies as a crime of violence (“COV”) under § 2L1.2(b)(1)(A)(ii). He also contends that the state-court documents failed to show under which subsection of § 30.02 he was convicted for his 2002 conviction of burglary of a habitation, so the conviction does not qualify as a COV even under the modified categorical approach.

The government has filed an unopposed motion for summary affirmance, asserting that Rodriguez-Cepeda’s arguments are foreclosed by *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*, *id.* at 669–71, forecloses Rodriguez-Cepeda’s reliance on *Mathis*. Accordingly, the motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment is AFFIRMED.