

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

No. 16-51239
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 19, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EMILIANO SAUCEDO-RIOS, also known as Bernardino Saucedo-Rios,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:16-CR-408-1

Before HIGGINBOTHAM, PRADO, and HAYNES, Circuit Judges.

PER CURIAM:*

Emiliano Saucedo-Rios pleaded guilty to illegal reentry in violation of 8 U.S.C. § 1326(a) and was sentenced to 46 months of imprisonment and three years of supervised release. He argues that the district court reversibly erred in applying a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii) because his Texas conviction for aggravated assault under Texas Penal Code § 22.02(a), upon which the enhancement was based, does not have the use, attempted use,

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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or threatened use of force as an element of the offense and does not satisfy the generic definition of aggravated assault.

The Government has filed an unopposed motion for summary affirmance because the issue raised on appeal is foreclosed by *United States v. Guillen-Alvarez*, 489 F.3d 197, 200-01 (5th Cir. 2007), in which we held that the Texas offense of aggravated assault is categorically a crime of violence for purposes of § 2L1.2(b)(1)(A)(ii). We reaffirmed the continued validity of *Guillen-Alvarez* after the Supreme Court's decision in *Mathis v. United States*, 136 S. Ct. 2243 (2016). See *United States v. Shepherd*, 848 F.3d 425, 428 (5th Cir. 2017).

Saucedo-Rios concedes that the sole issue raised on appeal is foreclosed by *Guillen-Alvarez*, but he raises the issue to preserve it for further review. Accordingly, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.