

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

United States Court of Appeals
Fifth Circuit

FILED

April 23, 2013

Lyle W. Cayce
Clerk

No. 12-40917

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS PENA-ROJAS,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:12-CR-256-1

Before JONES, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:*

Jose Luis Pena-Rojas appeals his sentence for illegally reentering the United States after deportation. He contends that his guidelines offense level was wrongly increased by 16 levels for a Texas burglary conviction, which he argues is not a crime of violence. In *United States v. Morales-Mota*, 704 F.3d 410 (5th Cir. 2012), we rejected the same contention made by Pena-Rojas, namely that the Texas burglary crime is broader than the listed generic offense of burglary of a dwelling because Texas defines the “owner” of a dwelling as one

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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having a greater right to possession than the criminal actor. *See Morales-Mota*, 704 F.3d at 411-12. As Pena-Rojas concedes in his reply brief, his claim is foreclosed by *Morales-Mota*. The judgment of the district court is AFFIRMED.