

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

United States Court of Appeals
Fifth Circuit

FILED

April 15, 2013

Lyle W. Cayce
Clerk

No. 12-40961

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CARLOS JAVIER CABRERA-ORELLANA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:12-CR-386-1

Before SMITH, PRADO, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Carlos Javier Cabrera-Orellana appeals his within-guidelines sentence for illegal reentry after an aggravated felony conviction. He challenges the imposition of the 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii) based on his prior Texas conviction for burglary of a habitation with intent to commit theft. According to Cabrera-Orellana, the Texas statutory definition of “owner” of a habitation, which includes a person who has “a greater right to possession of the property than the actor,” makes the statute broader than the generic

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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definition of burglary of a dwelling. Cabrera-Orellana's argument is foreclosed. *See United States v. Morales-Mota*, 704 F.3d 410, 412 (5th Cir. 2013). 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 as moot.