

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

No. 16-41243
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 13, 2018

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
No. 1:16-CR-17-1

ON PETITION FOR REHEARING

Before JOLLY, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:*

Ignacio Rodriguez-Cepeda appealed his sentence for illegal reentry after deportation. He contended that the district court erred in increasing his

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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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. We granted the government's unopposed motion for summary affirmance, agreeing that Rodriguez-Cepeda's arguments were foreclosed by *United States v. Uribe*, 838 F.3d 667 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 1359 (2017).

In *United States v. Herrold*, No. 14-11317, 2018 U.S. App. LEXIS 4068, at *19 (5th Cir. Feb. 20, 2018) (en banc), this court overruled *Uribe*. This panel requested letter briefs for the parties to state what action should be taken in light of *Herrold*. Both sides agree that the sentence cannot stand. The government carefully maintains its disagreement with *Herrold* for purposes of preserving the issue for further appellate review.

The petition for rehearing is GRANTED. The opinion, 691 F. App'x 181 (5th Cir. 2017) (per curiam), is WITHDRAWN, and the judgment of sentence is VACATED and REMANDED for resentencing. The mandate shall issue immediately.