

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

No. 16-41611
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 22, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RUBEN GARCIA-TURRUBIATE,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:15-CR-740-1

Before STEWART, Chief Judge, and GRAVES and DUNCAN, Circuit Judges.
PER CURIAM:*

Ruben Garcia-Turrubiate appeals the district court's application of a 16-level crime of violence enhancement under U.S.S.G. § 2L1.2 in determining his sentence for unlawful presence in the United States. This court reviews the district court's interpretation and application of the Guidelines de novo. *United States v. Godoy*, 890 F.3d 531, 535-36 (5th Cir. 2018).

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 16-41611

We agree with the parties that the crime of violence enhancement for Garcia-Turrubiate's prior conviction under Texas Penal Code § 30.02(a) was erroneous in light of *United States v. Herrold*, 883 F.3d 517, 541 (5th Cir. 2018) (en banc), *petitions for cert. filed* (Apr. 18, 2018) (No. 17-1445) and (May 21, 2018) (No. 17-9127), which was issued after Garcia-Turrubiate was sentenced but while this appeal was pending. *See Godoy*, 890 F.3d at 536 & n.16 (applying *Herrold* in a § 2L1.2 case). Accordingly, we VACATE the sentence and REMAND for resentencing.