

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

No. 16-50818
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 18, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ROBERT BAHENA, JR.,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:16-CR-21-1

Before DAVIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Robert Bahena, Jr., appeals the sentence imposed following his guilty plea conviction for possession with intent to distribute methamphetamine. He contends that the district court plainly erred by sentencing him as a career offender pursuant to U.S.S.G. § 4B1.1 based on his Texas conviction for burglary of a habitation under Texas Penal Code § 30.02. Bahena argues that

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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this conviction does not qualify as a crime of violence under § 4B1.1 in light of *Mathis v. United States*, 136 S. Ct. 2243 (2016).

The Government has filed an opposed motion for summary affirmance asserting that Bahena's arguments are foreclosed by our recent decision in *United States v. Uribe*, 838 F.3d 667 (5th Cir. 2016), *cert. denied*, 2017 WL 661924 (Mar. 20, 2017) (No. 16-7969). In the alternative, the Government requests an extension of time in which to file a brief on the merits.

The Government is correct that *Uribe* forecloses Bahena's *Mathis* argument. *See Uribe*, 838 F.3d at 669–71. Accordingly, the Government's motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.