

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

United States Court of Appeals  
Fifth Circuit

**FILED**

April 19, 2018

Lyle W. Cayce  
Clerk

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No. 17-11123  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

STEVE CUELLAR ZUNIGA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 6:14-CR-22-1

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Before JOLLY, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:\*

Steve Cuellar Zuniga pleaded guilty to one count of possession with intent to distribute 500 grams or more of methamphetamine. On resentencing after his initial appeal, the district court sentenced Zuniga within the applicable guidelines range to 168 months in prison, to be followed by a five-year term of supervised release. In his present appeal, Zuniga argues that his within-guidelines sentence is substantively unreasonable because U.S.S.G.

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 17-11123

§ 2D1.1 was not formulated using empirical evidence with respect to methamphetamine offenses. The Government moves for summary affirmance, asserting that the issue is foreclosed by circuit precedent. Alternatively, the Government moves for an extension of time to file an appellate brief.

We have held that *Kimbrough v. United States*, 552 U.S. 85, 109-10 (2007), does not disturb the presumption of reasonableness for guidelines sentences even if the relevant Guideline is not empirically based. *See United States v. Duarte*, 569 F.3d 528, 530-31 (5th Cir. 2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 366-67 (5th Cir. 2009). Accordingly, the judgment of the district court is AFFIRMED. The Government's motion for summary affirmance and the alternative motion for an extension of time to file an appellate brief are DENIED.