

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

No. 17-20177
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 7, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN ANTONIO ROMO VERA, also known as Juan Antonio Romo, also known as Juan Antonio Romo-Vera, also known as Juan Romo-Vera, also known as Antonio Romo Vera, also known as Antonio Ramo, also known as Cesar Emilo Reynaga-Rangel, also known as Antiono Juan Romo, also known as Juan Antonio Ramo, also known as Juan Romo,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CR-495-1

Before DAVIS, HAYNES, and GRAVES, Circuit Judges.

PER CURIAM:*

Juan Antonio Romo Vera 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

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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district court's interpretation and application of the Guidelines de novo. *United States v. Godoy*, 890 F.3d 531, 535-36 (5th Cir. 2018).

We agree with the parties that the crime of violence enhancement for Romo Vera'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 Romo Vera 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. The Government's motion to stay the appeal is DENIED. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013).