

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

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No. 17-20305  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

May 1, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS ARROYO-RAYA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:16-CR-557-1

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Before BENAVIDES, CLEMENT, and GRAVES, Circuit Judges.

PER CURIAM:\*

Jose Luis Arroyo-Raya appeals his 40-month upward variance sentence for illegal reentry after being previously removed following a felony conviction. He asserts that the district court committed plain error by including his prior Texas conviction for displaying a fictitious registration in the criminal history calculation. *See* U.S.S.G. § 4A1.2(c).

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 17-20305

Considering the factors set out in *United States v. Hardeman*, 933 F.2d 278, 281 (5th Cir. 1991), we conclude that the issue of whether the Texas offense of displaying fictitious registration is sufficiently similar to the excludable offenses listed in § 4A1.2(c)(1) is, at best, subject to reasonable dispute. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). Accordingly, if error occurred, it was neither clear nor obvious. *See id.*

The judgment of the district court is AFFIRMED.