

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
PAULITO GOVEA-SAN ROMAN,

*Petitioner*

v.

UNITED STATES OF AMERICA

*Respondent*

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas

## APPENDIX A

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

United States Court of Appeals  
Fifth Circuit

**FILED**

February 26, 2019

Lyle W. Cayce  
Clerk

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No. 18-10305  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

PAULITO GOVEA-SAN ROMAN,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 6:17-CR-48-1

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Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:\*

Paulito Govea-San Roman pleaded guilty of illegal reentry after deportation, and he was sentenced to a 57-month term of imprisonment and to a three-year period of supervised release. Govea-San Roman contends that use of the 2016 Guidelines Manual in determining his sentence violated his rights under the Ex Post Facto Clause and that he should have been sentenced under the 2015 Guidelines Manual. He posits that, under the 2015 Guidelines

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Manual, the 46- to 57-month guidelines range would only apply to him if the court imposed the 16-level crime-of-violence enhancement because of his robbery conviction. The 16-level enhancement would apply if the court determined that the offense was an enumerated offense of robbery or had as an element the use, attempted use, or threatened use of physical force against the person of another. *See* U.S.S.G. § 2L1.2(b)(1)(A)(ii) (2015) & U.S.S.G. § 2L1.2, comment. (n.(1)(B)(iii)) (2015).

This court has previously held that the Texas robbery statute lacks force as an element but that it is equivalent to the generic definition of robbery. *See United States v. Santiesteban-Hernandez*, 469 F.3d 376, 379-82 (5th Cir. 2006), *overruled on other grounds, United States v. Rodriguez*, 711 F.3d 541, 547-63 (5th Cir. 2013) (en banc)). Although he concedes that the issue he has raised is foreclosed under current law, Govea-San Roman contends that *Santiesteban-Hernandez* was wrongly decided, and he wishes to preserve the issue for possible further review. The Government has moved for summary affirmance or, in the alternative, an extension of time within which to file a brief on the merits.

Summary affirmance is appropriate if “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Because the only argument raised on appeal is foreclosed by precedent from this court, the Government’s motion for summary affirmance is GRANTED and the judgment of the district court is AFFIRMED. The Government’s alternative motion for an extension of time is DENIED as unnecessary.

## APPENDIX B

United States District Court  
 Northern District of Texas  
 San Antonio Division  
 FILED

UNITED STATES OF AMERICA

2018 FEB 23 AM 11:07

v.

DEPUTY CLERK *[Signature]* Case Number: 6:17-CR-00048-C(01)  
 USM No. 37992-177

PAULITO GOVEA-SAN ROMAN  
 Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)

The defendant, PAULITO GOVEA-SAN ROMAN, was represented by Sherylynn A. Kime-Goodwin.

The defendant pleaded guilty to count 1 of the indictment filed September 13, 2017. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
8 U.S.C. §1326(a) and 6 U.S.C. §§202(3), 202(4), and 557	Illegal Re-Entry After Deportation	09/20/2016	1

As pronounced on February 23, 2018, the defendant is sentenced as provided in pages 1 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1 of the indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material change in the defendant's economic circumstances.

Signed this the 23rd day of February, 2018.

*[Signature]*  
 SENIOR DISTRICT JUDGE SAM R. ZUMMINGS  
 UNITED STATES DISTRICT COURT

DEFENDANT: PAULITO GOVEA-SAN ROMAN  
CASE NUMBER: 6:17-CR-00048-C(01)

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### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 57 months as to count 1 to run consecutive with the 12-month custody sentence imposed in the supervised release revocation on November 3, 2017, in Case No. 6:10-CR-011-01-C, Northern District of Texas, San Angelo Division.

The defendant shall remain in the custody of the U.S. Marshal Service.

### RETURN

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

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UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL



DEFENDANT: PAULITO GOVEA-SAN ROMAN  
CASE NUMBER: 6:17-CR-00048-C(01)

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### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years.

The defendant shall report to the U.S. Probation Officer in a manner and frequency directed by the Court or Probation Officer in the district to which the defendant is released from the custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.
- ☐ The defendant shall participate in an approved program for domestic violence.
- ☐ The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: PAULITO GOVEA-SAN ROMAN  
CASE NUMBER: 6:17-CR-00048-C(01)

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### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally re-enter the United States, if deported, removed, or allowed voluntary departure.
2. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.
3. The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$40.00 per month.