

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

United States Court of Appeals
Fifth Circuit

FILED

October 16, 2012

Lyle W. Cayce
Clerk

No. 12-10188
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ELIAS RAMIREZ-PEINADO,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:11-CR-42-1

Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Elias Ramirez-Peinado raises arguments that he concedes are foreclosed by *United States v. Gomez-Herrera*, 523 F.3d 554, 562-63 (5th Cir. 2008), which rejected the argument that fast track programs create unwarranted disparities between defendants in districts that have the programs and defendants in districts that do not have such programs. He also raises arguments that he concedes are foreclosed by *United States v. Newson*, 515 F.3d 374, 377-78 (5th Cir. 2008), which held that the Government

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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may decline to move for an additional one-level reduction under United States Sentencing Guidelines § 3E1.1(b) based on the defendant's refusal to waive his right to appeal. The Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.