

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20947
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERNESTO MEDINA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CR-61-1
- - - - -

June 17, 1999

Before EMILIO M. GARZA, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:*

Ernesto Medina appeals from his conviction by guilty plea of illegal importation of Freon. Medina contends that the Government breached his plea agreement by failing to recommend sentencing at the low end of the guideline range.

Medina did not raise his contention in the district court; his contention is reviewed for plain error. *United States v. Cerverizzo*, 74 F.3d 629, 631 (5th Cir. 1996). Whether Medina provided the cooperation necessary to obtain the Government's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

recommendation is a factual issue that could have been resolved by the district court upon proper objection; Medina therefore cannot demonstrate plain error. *United States v. Alvarado-Saldivar*, 62 F.3d 697, 700 (5th Cir. 1995).

AFFIRMED.