

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

United States Court of Appeals
Fifth Circuit

FILED

November 9, 2010

Lyle W. Cayce
Clerk

No. 10-50628
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CESAR CHAVEZ-BARRAZA,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:05-CR-947-1

Before JOLLY, GARZA, and STEWART, Circuit Judges.

PER CURIAM:*

Cesar Chavez-Barraza, federal prisoner # 58304-180, filed a notice of appeal seeking a review of his 2006 sentence pursuant to 18 U.S.C. § 3742. However, this statute is unavailable to Chavez-Barraza, whose conviction we previously affirmed on direct appeal. *See United States v. Chavez-Barraza*, 237 F. App'x 946 (5th Cir. 2007). Although § 3742 provides that a defendant may directly appeal his sentence, the statute provides no mechanism through which

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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he may reopen a direct appeal. The instant appeal is without arguable merit, and it is, therefore, dismissed as frivolous. *See* 5th Cir. R. 42.2.

This is not Chavez-Barraza's first attempt to obtain a second appeal via § 3742. Chavez-Barraza previously filed such a notice of appeal, which the district court construed as a motion for an extension of time to file a notice of appeal and denied it. We thereafter dismissed the appeal. We warn Chavez-Barraza that if he files another notice of appeal seeking to attack the 2006 judgment pursuant to § 3742, sanctions will be ordered that could include, but are not limited to, dismissal, monetary costs, and restrictions on his entitlement to file pleadings in this court and any court subject to this court's jurisdiction.

APPEAL DISMISSED; SANCTION WARNING ISSUED.