

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

United States Court of Appeals  
Fifth Circuit

**FILED**

September 16, 2011

---

No. 11-50050  
Summary Calendar

---

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID GLEN METCALF,

Defendant-Appellant

---

Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 10-1248

---

Before BENAVIDES, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:\*

The Government's motion for summary affirmance is GRANTED. Appellant concedes his arguments are foreclosed by circuit precedent; to wit: *United States v. Johnson*, 632 F.3d 912 (5th Cir. 2011); *United States v. Heth*, 596 F.3d 255 (5th Cir. 2010); and *United States v. Whaley*, 577 F.3d 254 (5th Cir. 2009). Appellant also indicates that he raises the arguments for possible Supreme Court review. The judgment of the district court is SUMMARILY AFFIRMED.

---

\* Pursuant to 5<sup>TH</sup> 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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.