

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

United States Court of Appeals  
Fifth Circuit

**FILED**

December 17, 2012

\_\_\_\_\_  
No. 12-10385  
Conference Calendar  
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Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ELISEO PORTILLO-ARRAS, also known as Samuel Portillo-Ogaz,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:11-CR-63-1  
\_\_\_\_\_

Before DAVIS, OWEN, and HIGGINSON, Circuit Judges.

PER CURIAM:\*

Appealing the judgment in a criminal case, Eliseo Portillo-Arras raises an argument that he concedes is foreclosed by *United States v. Newson*, 515 F.3d 374, 377-78 (5th Cir. 2008), which held that the Government may decline to move for an additional one-point reduction under United States Sentencing Guideline § 3E1.1(b) based on the defendant's refusal to waive his right to appeal. The Government's motion for summary affirmance is GRANTED, its

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.