

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

United States Court of Appeals
Fifth Circuit

FILED

April 23, 2013

Lyle W. Cayce
Clerk

No. 12-50943
Summary Calendar

GABINO TORRES BARAJAS,

Petitioner-Appellant

v.

UNITED STATES OF AMERICA; WARDEN; FEDERAL BUREAU OF
PRISONS; GEO; UNITED STATES ATTORNEY GENERAL,

Respondents-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:12-CV-10

Before JONES, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:*

Gabino Torres Barajas, federal prisoner # 14114-081, an alien against whom the Bureau of Immigration and Customs Enforcement (“ICE”) has issued a detainer subjecting him to immediate removal from the United States upon release from Bureau of Prisons (BOP) custody, moves this court to proceed in forma pauperis (IFP) to appeal the denial of his 28 U.S.C. § 2241 petition challenging the BOP’s exclusion of him from rehabilitation programs and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-50943

halfway houses. His arguments are foreclosed by this court's decision in *Gallegos-Hernandez v. United States*, 688 F.3d 190, 192-93 (5th Cir.), *cert. denied*, 133 S. Ct. 561 (2012). We are barred from considering his argument that *Gallegos-Hernandez* was wrongly decided by our rule of orderliness. *Jacobs v. Nat'l Drug Intelligence Ctr.*, 548 F.3d 375, 378 (5th Cir. 2008) ("It is a well-settled Fifth Circuit rule of orderliness that one panel of our court may not overturn another panel's decision, absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our en banc court."). His argument that his status is materially different from that of the defendant in *Gallegos-Hernandez* is incorrect. Like Barajas, Gallegos-Hernandez was a federal prisoner against whom an ICE detainer had been lodged.

Accordingly, Torres Barajas's motion to proceed IFP is DENIED, and his appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2.