

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

United States Court of Appeals
Fifth Circuit

FILED

October 19, 2015

Lyle W. Cayce
Clerk

No. 13-10265
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARIO ALBERTO RAMIREZ-AVITUA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:12-CR-47-1

Before REAVLEY, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

Mario Alberto Ramirez-Avitua (Ramirez) appeals his sentence for illegal reentry after deportation. Ramirez argues that the Government impermissibly withheld the third-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(b).

Ramirez contends that based on Amendment 775 to the Sentencing Guidelines, which applies to cases pending on appeal, *United States v. Villegas*

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Palacios, 756 F.3d 325, 326 & n.1 (5th Cir. 2014), the Government should not withhold a motion for the additional one-level reduction merely because a defendant does not agree to waive his right to appeal. *See United States v. Garcia-Carrillo*, 749 F.3d 376, 377 (5th Cir.), *cert. denied*, 135 S. Ct. 676 (2014). Because Ramirez did not raise this argument in the district court, our review is for plain error. *See United States v. Morales-Rodriguez*, 788 F.3d 441, 443 & n.3 (5th Cir. 2015).

There is no evidence in the record regarding the Government's reason for not moving for the third-level reduction. Thus, Ramirez cannot establish clear or obvious error in connection with the Government's decision not to so move. *See id.* at 443-44.

The district court's judgment is AFFIRMED.