

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

No. 15-51156
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 6, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ADEODATO IBARRA-ALCAREZ, also known as Cesar Islas-Alvarez,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:96-CR-189-1

Before JONES, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:*

Adeodato Ibarra-Alcarez, federal prisoner # 15151-086, is serving a 293-month sentence after a jury convicted him of conspiracy to possess with intent to distribute marijuana and three counts of possessing marijuana with intent to distribute. He appeals the district court's denial of his motion to compel the Government to file a motion for reduction of sentence pursuant to Federal Rule of Criminal Procedure 35(b). Ibarra-Alcarez argues that the Government was

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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required to file a Rule 35(b) motion based upon his substantial assistance in providing information that led to the apprehension of drug traffickers.

Ibarra-Alcarez does not argue that the Government's refusal to file a Rule 35(b) motion was based on an unconstitutional motive. *See United States v. Grant*, 493 F.3d 464, 467 (5th Cir. 2007). He has also failed to show that the Government either was compelled to file a Rule 35(b) or bargained away its discretion concerning whether to file a Rule 35(b) motion. *See United States v. Price*, 95 F.3d 364, 368-69 & n.2 (5th Cir. 1996). Ibarra-Alcarez's motion to compel "was unauthorized and without a jurisdictional basis." *United States v. Early*, 27 F.3d 140, 141 (5th Cir. 1994). Accordingly, the judgment of the district court is AFFIRMED.